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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

~~No. 198.~~ 16

HARRIET C. JONES AND FRANK C. JONES, ADMINISTRATRIX AND ADMINISTRATOR *d. b. n. c. t. a.* OF THE ESTATE OF GAZAWAY B. LAMAR, DECEASED, APPELLANTS,

vs.

ELIZA A. CUNNINGHAM, JANE C. CUNNINGHAM, CARO N. DU BIGNON, GEORGIA G. LAMAR, AND MARY L. LAMAR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 9, 1888.

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1 H. C. & F. C. JONES, Administrators, Compl't-,
vs.
CAROLINE A. LAMAR, Administratrix, *et al.*, Def'ts.
} In Equity. Bill, &c.

At a stated term of the fifth circuit court of the United States for the eastern division of the southern district of Georgia, begun and holden in the United States court-rooms, in the city of Savannah, on the second Monday in April, 1888—present, the Honorable Emory Speer, district judge, presiding—the following, among other, proceedings were had:

Be it remembered that heretofore, to wit, on the 21st day of July, 1886, came the complainants, Harriet Cazenove Jones and Frank Cazenove Jones, administrators of G. B. Lamar, C. T. A., by Geo. A. Mercer, their solicitor, and filed in the clerk's office of said court, in the words and figures following, their—

Bill.

In the Circuit Court of the United States for the Southern District of Georgia, Eastern Division.

2 HARRIET CAZENOVE JONES & FRANK CAZENOVE JONES, Administrators, Compl'ts,
and
CAROLINE A. LAMAR *et al.*, Defend'ts.
} In Equity.

To the judges of the circuit court of the United States for the southern district of Georgia:

Harriet Cazenove Jones and Frank Cazenove Jones, of New York, citizens of the State of New York, in the United States of America, as administrators, with the will annexed, of the estate of Gazaway B. Lamar, late of the city and State of New York, deceased, bring this their bill against Caroline A. Lamar, Eliza A. Cunningham, Jane C. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, all citizens of the State of Georgia and residing in the eastern division of the southern district thereof.

And thereupon your oratrix and orator complain and say that on the fourth day of March, A. D. 1886, they were duly appointed administrators, with the will annexed, of all and singular the goods, chattels, and credits which were of Gazaway B. Lamar, late of the city and State of New York, deceased, by the surrogate of the
3 county and city of New York; and your oratrix and orator, pending this action, file with the clerk of this court, to become a part of the record, a properly authenticated exemplification of their letters of administration; and your oratrix and orator complain and say that on the fourteenth day of January, A. D. 1861, the said Gazaway B. Lamar, then in life, did execute and deliver to the then Bank of the Republic, of New York, a corporation under the laws of the State of New York and located in the city of

New York, his certain bond and mortgage for the sum of one hundred and sixty-four thousand dollars, conditioned for the payment of eighty-two thousand dollars on demand; which said bond and mortgage were made payable to Gazaway B. Lamar as president of the said Bank of the Republic, of New York, and were duly placed upon record in the county of Chatham and State of Georgia, in Book of County Records 3 W's, folios 432 to 435.

And your oratrix and orator show that said mortgage created a lien upon certain real estate in said county of Chatham and in the city of Savannah then owned by said Gazaway B. Lamar, known as Lamar's wharves, press, and warehouse, and hereinafter more particularly described.

That on the thirty-first day of December, 1863, the said Gazaway B. Lamar duly conveyed to Charles A. L. Lamar, of the said
4 county of Chatham, certain lands in the city of Savannah and county of Chatham, including the lands and property embraced in said mortgage, and that the said Charles A. L. Lamar accepted the deed of conveyance of said lands and took possession of the same with full knowledge that said lands and property were embraced in said mortgage and covered by the lien thereof, and that he continued in the possession of the same with such knowledge up to the time of his death without having paid or satisfied said mortgage or said bond.

That the said Charles A. L. Lamar departed this life on or about April sixteenth, 1865, intestate, and that on the sixth day of November, 1865, the said Caroline A. Lamar, the widow of said intestate, was duly appointed administratrix upon his estate by the ordinary of said county of Chatham, and as such took possession and control of all his property, including the lands so covered by the lien of said mortgage.

And your oratrix and orator further show that the said Bank of the Republic, of New York, proceeded to foreclose the said mortgage, and that on the seventeenth day of May, 1866, R. H. Lowry, the then president of said bank, duly obtained a rule absolute on fore-
closure; that on the third day of January, 1867, a mortgage
5 *fi. fa.* issued on said foreclosure and was duly levied upon said mortgaged premises, and that on the tenth day of January thereafter a claim to said property, founded upon the said conveyance of the same to her intestate, was interposed by the said Caroline A. Lamar as administratrix aforesaid.

And your oratrix and orator further show that pending said claim and before the hearing thereof a bill in equity was duly brought by said Bank of the Republic, then the National Bank of the Republic, of New York, and by the said Gazaway B. Lamar, parties complainant, against the said Caroline A. Lamar, as administratrix aforesaid, in the superior court of the said county of Chatham, reciting the facts hereinbefore set forth and proposing to said administratrix to compromise and compound said mortgage indebtedness upon terms hereinafter referred to.

That the answer of the defendant was sworn to March the sixth, 1868, and duly filed, and the issues raised by said bill and answer

were submitted to a jury; that the jury found that the said Charles A. L. Lamar received the deed to the said lands with full notice of the previous mortgage on the same; that the said mortgaged premises were liable for the principal sum of eighty-two thousand
6 dollars, with interest thereon from January the fourteenth, 1861, and costs, and that it would be a benefit to the estate of the said intestate to compound the said indebtedness by a payment of eighty thousand dollars, with interest from February twenty-first, 1868, and to secure the same to the said National Bank of the Republic, of New York; that on March sixth, 1868, a decree was duly entered upon said verdict which provided that the said Caroline A. Lamar, as administratrix as aforesaid, should execute and deliver a new bond and mortgage, and that upon the delivery of such new bond and mortgage the old bond and mortgage should be delivered up to be canceled. By virtue of and in pursuance of said decree the said Caroline A. Lamar, as administratrix as aforesaid, on the seventeenth day of March, 1868, duly executed and delivered to the said National Bank of the Republic, of New York, her certain bond and mortgage to secure the same for one hundred and sixty thousand dollars, conditioned for the payment of eighty thousand dollars, with interest thereon from February twenty-first, 1868, said principal to be paid in equal annual instalments of eight thousand dollars each; that said
7 mortgage embraced all those lots and wharves in the city of Savannah aforesaid bounded on the north by the Savannah river, east by the lot and wharf of the hydraulic cotton press, south by a street, and west by Willink's lots, and also the lots lying south of the same and having the eastern boundary, and all those lands lying east and south of the same, containing seventy-five acres, more or less, except a certain flour mill and the lots on which it is erected, all of which will more fully appear, reference being had to said bond and mortgage, a copy of the same being hereto attached, marked Exhibit A, which your oratrix and orator pray may be taken as part of their bill of complaint, with leave to refer thereto as occasion may require. Upon the execution and delivery of said new bond and mortgage the old bond and mortgage were surrendered by the said Bank of the Republic, of New York, and the new bond and mortgage were duly placed upon record in the said county of Chatham in Book of Deeds 4 A's, folios 141, &c.

And your oratrix and orator show that on the seventh day of May, 1874, the said new bond and mortgage were, for value received, duly assigned to the said Gazaway Lamar, as will more fully appear from the record of said assignment in the records for said county
8 of Chatham in Book of Mortgages G, folio 481, and from a copy of the same hereto attached as Exhibit B, to which the usual liberty of reference is prayed; that the said Gazaway B. Lamar continued the owner in his own right of said bond and mortgage up to the time of his death, which occurred in the city and State of New York on the fifth day of October, A. D. 1874; that the said G. B. Lamar died testate, and the oratrix and orator were duly appointed administrators with the will annexed, as heretofore set

forth, and by virtue of such administration acquired possession and control of the assets of said testator, including said bond and mortgage, and became charged with the duty of collecting the same; and your oratrix and orator further complain and say that on the seventh day of September, 1881, the said Caroline A. Lamar, as administratrix as aforesaid, by virtue of an order for sale obtained from the ordinary for Chatham county, did sell and convey thirteen and seventy-seven one-hundredths acres of the land covered by the lien of said mortgage, and did receive therefor the price and sum of thirteen thousand and seven hundred and seventy dollars, and on the seventeenth day of September next thereafter did also sell and convey, by virtue of said order, three acres and a fraction
9 of an acre of said land, and did receive therefor five thousand dollars, making a sum total of eighteen thousand seven hundred and seventy dollars.

And your oratrix and orator are advised that a regular sale under the order of the ordinary in the State of Georgia divests the lien of a mortgage upon the land so sold and transfer- such sale to the proceeds of such sale; and your oratrix and orator show that the said administratrix has never paid or accounted for to the estate of said Gazaway B. Lamar any portion of the said proceeds so covered by the lien of said mortgage.

And your oratrix and orator further show that on the fifth day of July, 1882, the said Caroline A. Lamar, administratrix as aforesaid, as they have since ascertained, did petition the ordinary of Chatham county for a discharge from her trust upon the ground that she had fully and faithfully administered said estate up to a final settlement, and that there was no reason why the same should be kept open, and that on the tenth day of January, 1883, a discharge was granted as prayed for, said bond and mortgage remaining due and unpaid.

And your oratrix and orator show that on the twenty-
10 seventh day of July, 1882, pending said application for discharge, the heirs and distributees of the estate of said Charles A. L. Lamar—that is to say, the said parties defendant to this bill—did enter into a family arrangement and did covenant to and with each other, that the estate of the said Charles A. L. Lamar should be kept together undivided, but should be held by them as tenants in common, each heir to own her own "individual" proportion—that is to say, the said widow, Caroline A. Lamar, one undivided fifth of the whole and each child *are* undivided fifth part of the remaining four-fifths, all of which will more fully appear, reference being had to said agreement, to be found *at* record in the records of said county of Chatham, in Book 5 F's, folio 142, and a copy of which, with a schedule of the property of said estate, is hereto attached, marked Exhibit C, which your oratrix and orator pray may be taken as a part of this their bill, with the usual liberty of reference.

And your oratrix and orator show that at and after the said petition for discharge and the said family agreement and the said discharge they were residents of the State of New York and had no notice or knowledge of the same.

And your oratrix and orator show that the said heirs and distributees of said estate could not, by taking the possession and control of said property as tenants in common or by the discharge of said administratrix, in any manner divest or affect the lien of said mortgage upon said lands or avoid the obligations of said bond, but that the said lands and property so covered by the lien of said mortgage passed into the possession and control of said defendants subject to said lien, which still adheres to and covers said property in their hands, and to the obligations of said bond.

11

And your oratrix and orator show that the said Caroline A. Lamar is accountable to them for the proceeds of said mortgaged land which went into her hands affected by said lien, and that if she distributed said proceeds to said heirs-at-law each one is accountable for the proportion of such proceeds so received, and should the said lands so covered by said mortgage and now held by said defendants as tenants in common as aforesaid fail under foreclosure and the decree of this honorable court to produce and realize a sufficient amount to pay and fully satisfy the principal, interest, attorney's fees, and commissions, charges, and costs now due on said mortgage and on the foreclosure of the same the said several parties defendant will be liable and bound to contribute from the assets and property of said estate received by them outside of and in addition to the property covered by said mortgage lien sufficient sums and amounts to pay off any and all deficiency and to make good the entire amount due on said bond and on the mortgage given to secure the same.

12

And your oratrix and orator show that there is now due on said bond and mortgage the principal sum of sixty-four thousand nineteen and $\frac{88}{100}$ dollars, besides interest, and your oratrix and orator show that no remedy is afforded them under the strict rules of the common law to foreclose the said mortgage against the said defendants, and to subject the said lands in their possession and control to the lien of the same, and to recover the proceeds of said mortgage premises sold and disposed of as aforesaid, and to compel contribution to make good any deficiency and to collect said bond, and that a court of equity alone can afford full, adequate, and complete relief in the premises.

To the end, therefore, that the said defendants, the said Caroline A. Lamar, the said Eliza A. Cunningham, the said Caro N. Du Bignon, the said Georgia G. Lamar, the said Jane C. Cunningham, and the said Mary S. Lamar, may full, true, and perfect answer make to all and singular the matters and *matters and* things hereinbefore set forth—discovery from said defendants under oath being expressly waives—and that the said mortgage may be foreclosed and the equity of redemption of the said defendants forever barred and the lands covered by the same subjected to the lien thereof, and that the said Caroline A. Lamar may be held to account for the proceeds of all land embraced in said mortgage and sold and disposed of by her as administratrix as aforesaid, and that the other defendants herein named may be held to account for any portion

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of such proceeds paid to or received by them, and that if necessary the writ of injunction or other extraordinary process of the court may issue from time to time to prevent any sale or disposition of said lands or any part thereof pending this bill, and that the said defendants may be held to contribute out of the respective amounts or properties received by them as distributees such sums as may be necessary to supply any deficiency after sale on foreclosure, and to pay the full amount due on said bond and mortgage, and that your oratrix and orator may collect from said defendants the entire amount due as aforesaid, and that the said mortgaged premises may be sold under the decree of this court, and that for any bal-
14 ance that may be sold under the decree of this court and that for any balance that may be found due over and above the proceeds of such sale or sales execution may be issued, if necessary, for the collection of the same in accordance with equity rule 92, and that your oratrix and orator may have all such other and further relief as the nature of the case may require and to your honors shall seem meet. May it please your honors to grant unto your oratrix and orator the writ of subpœna to be directed to the said defendants commanding them and each of them to appear and answer in the premises.

And your oratrix and orator will ever pray, &c.

GEORGE A. MERCER,
Solic. for Compl'ts.

15 EXHIBIT A.

Know all men by these presents that I, Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, of the city of Savannah, county of Chatham and State of Georgia, and held and firmly bound unto the National Bank of the Republic, a body corporate located in the city and State of New York, in the sum of one hundred and sixty thousand dollars, for the payment of which I bind myself, as administratrix as aforesaid, and my successors in the said administration, firmly by these presents, sealed with my seal and dated the seventeenth day of March, eighteen hundred and sixty-eight, in pursuance of a decree of the superior court of the county of Chatham aforesaid rendered on the six day of March, eighteen hundred and sixty-eight, in a cause then pending on the equity side of said court wherein the said National Bank of the Republic and Gazaway B. Lamar were complainants and the said Caroline A. Lamar, administratrix as aforesaid, was defendant. The condition of the above obligation is such that if the said Caroline A. Lamar, administratrix as aforesaid, or her successors in the administration shall well and truly pay or cause to be payed to the said The National Bank of the Republic or its assigns the sum of eighty thou-
16 sand dollars, with interest thereon from the twenty-first day of February, eighteen hundred and sixty-nine; and the further sum — eight thousand dollars, with interest on seventy-two thousand dollars from the day appointed for the payment above mentiononed, the twenty-first day of February, eighteen hundred and sev-

enty; and the further sum of eight thousand dollars, with interest on sixty-four thousand — from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-one; and the further sum of eight thousand dollars, with interest on fifty-six thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-two; and the further sum of eight thousand dollars, with interest on forty-eight thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-three; and the further sum of eight thousand dollars, with interest on forty thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-four; and the further sum of eight thousand dollars, with interest on thirty-two thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-five;
and the further sum of eight thousand dollars, with interest
17 on twenty-four thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-six; and the further sum of eight thousand dollars, with interest on sixteen thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-seven; and the further sum of eight thousand dollars, with interest thereon from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-eight, then the above obligation to be void; but if default shall be made in any or either of the payments above specified or any part thereof, then this bond shall be and remain in full force and virtue; provided, nevertheless, that the said Caroline A. Lamar, administratrix as aforesaid, and her successors in the said administration have the right to pay to the said The National Bank of the Republic or its assigns the whole or any part of the said sum of eighty thousand dollars, with the interest thereon as aforesaid, before the times hereinbefore appointed for the payment of the same.

CAROLINE A. LAMAR, [SEAL.]
Adm'x Est. C. A. L. Lamar.

In the presence, at Savannah, in the State of Georgia aforesaid—
THOS. E. LLOYD,
Not. Pub., C. C.

I do hereby certify that the bond is secured by mortgage duly stamped.

THOS. E. LLOYD,
Not. Pub., C. C.

Recorded March 18th, 1868.

18 EXHIBIT A.

This indenture, made this seventeenth day of March, eighteen hundred and sixty-eight, between Caroline A. Lamar, of Savannah,

county of Chatham and State of Georgia, administratrix of the estate of Charles A. L. Lamar, of the first part, and the National Bank of the Republic, a body corporate, of the city and State of New York, of the second part:

Whereas by a decree of the superior court of the county of Chatham aforesaid rendered on the six- day of March, eighteen hundred and sixty-eight, in a cause then pending on the equity side of said court in which the said party of the second part and Gazaway B. Lamar were complainants and the said party of the first part, as administratrix as aforesaid, was defendant, the said party of the first part, administratrix as aforesaid, was authorized to make and deliver to the said party of the second part, for the considerations set forth in said decree, her bond for the penal sum of one hundred and sixty thousand dollars, conditioned to be void upon the payment of the sum of eighty thousand dollars, with interest thereon, in the manner set forth in said decree, and also for the purpose of securing the payment of the moneys mentioned in the condition of said bond a mortgage of all those lots and wharves in the said city of Savannah, bounded on the north by the Savannah river, on the east by the lot and wharves of the hydraulic cotton press, on the south by a street, and on the west by Willink's lots, and the
19 lots lying south of the same and having the eastern boundary and all those lands lying east and south of the same, containing seventy-five acres, more or less, except a certain flour mill and the lots on which it is erected; all of which said property was conveyed by the said Gazaway B. Lamar to the said Charles A. L. Lamar by deed dated the thirty-first day of December, eighteen hundred and sixty-three, subject to the provisions of a contract made the eighteenth day of December, eighteen hundred and sixty-two, between the said Gazaway B. Lamar and the Atlantic and Gulf railroad, such mortgage containing the provisions that no proceedings to foreclose the same for default in any of the payments specified in the said bond shall be commenced within six months after such default, and that in case of any such default it may be foreclosed for the whole of the principal sum above mentioned then unpaid, notwithstanding that some of the specified payments may not yet be due by the terms of the said bond, with interest thereon, and containing also a waiver by the said Caroline A. Lamar of any and all right or claim of dower she may have in the said property or any part thereof as against such mortgage;

And whereas the said party of the first part, as administratrix as aforesaid, in pursuance of the said decree, has made and delivered to the said party of the second part her bond, of even date with these presents, for the penal sum of one hundred and sixty thousand
20 dollars, conditioned to be void upon the payment by the said party of the first part, administratrix as aforesaid, or her successors in the said administration to the said party of the second part or its assigns of the sum of eighty thousand dollars, with interest thereon from the twenty-first day of February, eighteen hundred and sixty-eight, in the manner following—that is to say, the sum of eight thousand dollars, with interest on eighty thousand

dollars from the day aforesaid, on the twenty-first day of February, eighteen hundred and sixty-nine; and the further sum of eight thousand dollars, with interest on seventy-two thousand dollars from the day appointed for the payment above mentioned, on the twenty-first day of February, eighteen hundred and seventy; and the further payment of eight thousand dollars, with interest on sixty-four thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-one; and the further sum of eight thousand dollars, with interest on fifty-six thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-two; and the further sum of eight thousand dollars, with interest on forty-eight thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-three; and the further sum of eight thousand dollars, with interest on forty thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-four; and the further sum of eight thousand dollars, with interest on thirty-two thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and sevent-five; and the further sum of eight thousand dollars, with interest on twenty-four thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-six; and the further sum of eight thousand dollars, with interest on sixteen thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-seven; and the further sum of eight thousand dollars, with interest thereon from the day appointed for the last payment above mentioned, on the twenty-first day of February, eighteen hundred and seventy-eight:

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22

Now, this indenture witnesseth that the said party of the first part, administratrix as aforesaid, by virtue of the power given her by the said decree, and for the consideration aforesaid and in order to secure to the said party of the second part the faithful performances of the conditions of her said bond, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said party of the second part all the said property above mentioned and described, except as aforesaid, and every part thereof, together with all the rights, members, and appurtenances to the same belonging, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law and in equity of her, the said party of the first part, administratrix as aforesaid, and of the heirs-at-law of the said intestate of, in, and to the same and every part thereof; to have and to hold the same and every part thereof, with the appurtenances, unto the said party of the second part and its assigns, to its and their only use forever, upon condition nevertheless that if the said party of the first part, administratrix as aforesaid, and her successors in the said

administration shall well and truly pay or cause to be paid to the said party of the second part and its assigns the said sum of eighty thousand dollars, with the interest thereon in the said bond mentioned, in the payments and at the times specified in the said bond, if not previously paid as provided for in the said bond, then this indenture and the estate hereby granted and every clause and article herein contained, as well as the said bond, shall cease, determine, and be
23 void; but if default shall be made in either of the said payments mentioned in the said bond or any part thereof so that the same or any part thereof shall remain unpaid for six months after the time appointed in said bond for the payment of the same, then it shall and may be lawful for the said party of the second part and its successors to enter upon and sell the same mortgaged property according to the laws of the said State of Georgia in such cases made and provided, and out of the proceeds of such sale to retain not only the amount then due according to the items of the said bond and in which default shall be made as aforesaid, but also the whole of the said principal sum of eighty thousand dollars then unpaid, with interest thereon to the time of such sale, notwithstanding the times appointed in the said bond for the payment of the same shall not yet have arrived, the same being considered as due upon the occurrence of such default for the purpose of such foreclosure and collection, together with the costs and expenses of foreclosure and sale, including the usual and customary fees and commissions of attorneys for foreclosures and collection, rendering the residue, if any, to the said party of the second part, administratrix as aforesaid, or her successors in the said administration; and the said Caroline A. Lamar hereby waives in favor of the said party of the second part and its assigns any and all right or claim of dower she may
24 have in and to the said mortgaged property and every part thereof.

In testimony whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written.

CAROLINE A. LAMAR, [L. S.]
Adm'x Est. C. A. L. Lamar.

Signed, sealed, and delivered in presence of, at Savannah, in the State of Georgia aforesaid—

M. P. LAMAR.
THOS. E. LLOYD,
Not. Pub. C. C.

[U. S. internal revenue stamp, $8,000.]

Recorded March 18th, 1868.

EXHIBIT B.

Know all men by these presents that The National Bank of the Republic, a body corporate of the city and State of New York, party of the first part, in consideration of the sum of sixty-four thousand and nineteen dollars and eighty-eight cents, lawful money of the United States, to said bank in hand paid by Gazaway B. Lamar, of

the State of Georgia, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part a certain indenture of mortgage bearing date the seventeenth day of March, in the year one thousand eight hundred and sixty-eight, made by Caroline A. Lamar, administratrix of the estate of
25 Charles A. L. Lamar, to secure the payment of eighty thousand dollars and interest, together with the bond or obligation therein described and the money due and to grow due thereon, with the interest; to have and to hold the same unto the said party of the second part, his legal representatives and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned; and said *bond* doth hereby make, constitute, and appoint the said party of the second part its true and lawful attorney, irrevocable, in its name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and, in case of payment, to discharge the same as fully as said bank might or could do if these presents were not made. The said mortgage was recorded in the office of the clerk of the superior court, Chatham county, State of Georgia, in County Record Book 4 A, folios 142, 143, 144, the 18th March, 1868, and the said bond or obligation was also recorded in said office in County Records Book 4 A, folios 141, 142, 18th March, 1868.

In witness whereof said party of the first part has caused its corporate seal to be herewith affixed and these presents to be signed by its president and attested by its cashier, under authority of its board of directors, the seventh day of May, one thousand eight hundred and seventy-four.

R. H. LOWRY, *President.* [CORPU. SEAL.]

Attest: H. W. FORD, *Cash'r.*

In presence of—
EDWIN F. COREY, JUN.

26 STATE OF NEW YORK, }
City and County of New York. }

Be it known that on this 8th day of May, A. D. 1874, before me, Edwin F. Corey, Jr., a commissioner for the State of Georgia, duly commissioned and qualified, and resident in said city and county, personally appeared R. H. Lowry, to me personally known to be the president of the National Bank of the Republic, of New York, the grantor named in and who executed the above instrument, by its said president, who acknowledged that he executed the above instrument by authority of a resolution of the board of directors of said bank and for the uses and purposes therein named and mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

[SEAL.] EDWIN F. COREY, JUN.,
Commissioner for the State of Georgia in New York.

Recorded June 16th, 1875.

EXHIBIT C.

GEORGIA, }
Chatham County. }

Memorandum of an agreement made, entered into, and concluded this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and eighty-two, between Caroline A. Lamar, widow of Charles A. L. Lamar, late of said county, deceased,
27 and Eliza A. Woodbridge, formerly Lamar; Jane C. Cunningham, formerly Lamar; Caro. N. Du Bignon, formerly Lamar; Georgia G. Lamar, and Mary L. Lamar, a minor, who appears and enters unto these presents by T. M. Cunningham, her duly appointed guardian.

Whereas Charles A. L. Lamar departed this life on the sixteenth day of April, A. D. 1865, leaving him surviving *and* his only heirs-at-law his widow and five daughters above named; and whereas the said Charles A. L. Lamar died intestate and seized and possessed of a considerable and solvent estate in said county of Chatham and elsewhere, a statement of which, so far as can be ascertained, is hereto annexed, marked Exhibit A; and whereas the said Caroline A. Lamar was duly appointed the administratrix of said estate by the ordinary of Chatham county on the sixth (6th) day of November, A. D. 1865, and as such administratrix has held and managed said estate up to the present time; and whereas the property of said estate is not susceptible of an equal division in kind and it is manifestly best for the interests of all concerned to keep the said estate together for the present and to divide the income, proceeds, and profits thereof in the proportion of ownership as established by the statute of distributions in Georgia; and whereas the said administratrix has completed and discharged her functions and duties as such and there is no longer occasion to keep the same together as an unadministered estate: Now, this agreement witnesseth that the said parties, by virtue of the premises and for their mutual
28 benefit and advantage, do covenant and agree to and with each other as follows: That the said Caroline A. Lamar shall proceed to obtain her discharge as administratrix and shall render her final return as such, and that the said estate shall be kept together undivided in kind, but held, owned, and possessed by the said several parties, tenants in common, in the several proportions fixed and established by the statute of Georgia in that behalf enacted—that is to say, that the said Caroline A. Lamar, widow of said intestate, shall own and enjoy one equal undivided fifth part of all the estate and property of said intestate and of all the rents, income, and profits thereof according to the provision of section 2484 of the Code of Georgia of 1873, and that the said children herein named, Eliza A., Jane C., Caro. N., Georgia G., and Mary L., shall each own and enjoy one equal undivided fifth part of all the remaining four-fifths of said estate and of the rents, incomes, and profits thereof; that the said estate shall be managed and the rents and incomes collected and received by the said Caroline A. Lamar as agent for

said several owners and tenants in common or by such other agent as a majority of said tenants in common may in writing appoint, and such agent, after paying taxes and other necessary charges, shall divide and distribute the net income of said estate among the said tenants in common or parties entitled to receive the same in the proportions established and as herein set forth; that nothing
29 herein contained shall affect the rights or powers of any trustee in whom the legal title to the estate and property of any of the parties herein named may be vested for the use and benefit of such party or parties.

In witness whereof the said parties hereunto *to* set their hands and seals the day and year first above written.

CAROLINE A. LAMAR. [L. S.]
ELIZA A. WOODBRIDGE. [L. S.]
JANIE C. CUNNINGHAM. [L. S.]
CARO N. DU BIGNON. [L. S.]
GEORGIA G. LAMAR. [L. S.]
F. M. CUNNINGHAM,
G'd'n Mary G. Lamar. [L. S.]

Signed, sealed, executed, and delivered in presence of—
C. M. CUNNINGHAM,
F. P. RAVENEL,
Not. Pub., C. C., Ga.,
ANN V. DU BIGNON,
T. T. WINDSOR,
N. P., B. C., L. S., Baldwin Co.,
Witnesses to Signature of Caro. N. Du Bignon.

Inventory Property of Estate of Charles A. L. Lamar, Late of Chatham County.

		Estimated value.
No.	I. Wharves, presses, warehouses, and sixty-two acres of land east of and adjoining city of Savannah, Ga.	$80,000 00
No.	II. Fifty-seven and sixteenth acres south of race-track	Unknown.
No.	III. Cold Spring, Meriwether county, eleven hundred acres	From $4 to $7 p'r acre.
No.	IV. Williamson tract, Augusta road, fifteen acres	300 00
No.	V. Seven hundred and forty-five acres wild land in Baker and Lowndes counties, Georgia	745 00
No.	VI. Three-fourths flour mill	Unknown.
No.	VII. Two houses on lot number twenty-seven, Warren ward	1,600 00
No.	VIII. Two houses on Randolph street, Savannah	1,000 00
No.	IX. One share theatre stock	200 00
No.	X. Lot number three, section "F," Bonaventure	100 00
30 No.	XI. Lots 171, 172, 173, 174, and 202, Laurel Grove	50 00

No. XII.	Three shares Central R. R. stock	300 00
No. XIII.	Five shares Southwestern R. R. stock	500 00
No. XIV.	Two certificates debentures, six per cent.	200 00
No. XV.	Two one-hundred-dollar Savannah bonds	200 00
No. XVI.	One-sixth interest in gold mine, Columbia Co.	1,500 00
No. XVII.	An interest in cotton claim prosecuted by G. A. Lamar	Unknown.
	One lot of one hundred and twenty-five acres, Baker Co., Ga.	Unknown.

Also following scrip for stocks, reguarded as valueless:
10 shares Gulf R. R. stock.
7 shares Albany and Gulf R. R. stock.
5 " Old Philadelphia S. S. stock.

Received for record July 28th, 1882, and recorded August 11th, 1882.

31 *Equity Subpœna to Appear and Answer.*

UNITED STATES OF AMERICA, *Eastern Division, Southern District of Georgia,* } *ss:*

HARRIET CAZENOVE JONES & FRANK CAZENOVE JONES, Administrators, Complainants, and CAROLINE A. LAMAR *et al.*, Defendant-. } In Equity.

The President of the United States of America to Caroline A. Lamar, Eliza C. Cunningham, Jane E. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, Mary L. Lamar, Greeting:

For certain causes offered before the judges of the fifth circuit court of the United States for the eastern division, southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, wheresoever the same shall then be, at rules, to be had on the first Monday in September next, to answer to those things which shall then and there be objected to you in a bill of complaint for foreclosure, &c., filed by the said com-
32 plainants, and to do further and receive what the said court shall have considered in that behalf; and this you may in nowise omit under a penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah, in said district, this the 21st day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of American Independence the one hundred*th* and tenth.

Seal of the Circuit Court, Southern District of Georgia.

MARION ERWIN,
Deputy Clerk.

GEO. A. MERCER,
Complainants' Solicitor.

MEMORANDUM.—The defendant- *is* required to enter appearance in the above cause in the clerk's office on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso* against —.

MARION ERWIN,
Deputy Clerk.

GEO. A. MERCER,
Complainants' Solicitor.

Original issued 21 day of July, A. D. 1886.

M. ERWIN, *Dep. Clerk.*
GEO. A. MERCER,
Complainants' Solicitor.

Due and legal service of the within subpœna acknowledged and copy and all further service waived.
Savannah, July 22d, 1886.

LAWTON & CUNNINGHAM,
F. G. DU BIGNON, &
CHISHOLM & ERWIN,
Solicitors fo- Def'ts.

Return filed July 22nd, 1886.

M. ERWIN, *Dep Clerk.*

33 *Equity Precept for Appearance.*

United States Fifth Circuit Court, Southern District of Georgia.

HARRIET CAZENOVE JONES & FRANK CAZENOVE JONES, Adm. Est. of G. B. Lamar, C., Complainants, and CAROLINE A. LAMAR *et al.*, Defendant-. } In Equity.

The clerk of this court will please enter our appearance as solicitors for the defendants in the above-entitled cause.
Dated Sept. 6th, 1886.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Solicitors for Defendants.

Equity Order for Appearance.

United States Fifth Circuit Court, Southern District of Georgia.

HARRIET CAZENOVE JONES & FRANK CAZENOVE JONES, Adm. Est. of G. B. Lamar, C. S. A., Complainants, and CAROLINE A. LAMAR *et al.*, Defendant-. } In Equity.

On filing precept in this cause and on motion of Lawton & Cunningham, Chisholm & Erwin, & F. G. Du Bignon, ordered that their

appearance as solicitors for defendant- herein be, and the
34 same hereby is, entered and the cause be now docketed for said defendant-.

Witness the Honorable Morrison R. Waite, Chief Justice of the *Superior* Court of the United States, this sixth day of September, A. D. 1886.

Seal of U. S. Circuit Court, Georgia.

S. F. B. GILLESPIE,
Deputy Clerk.

Endorsement: Precept for appearance and order thereon. Filed and entered this 6th day of Sept., 1886. S. F. B. Gillespie, deputy clerk. Lawton & Cunningham, Chisholm & Erwin, & F. G. Du Bignon, solicitors for defendant-.

Answer of Caroline A. Lamar.

In the United States Circuit Court for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE Jones, Administratrix and Administrator *de Bonis Non*, with the Will Annexed, of the Estate of Gazaway B. Lamar, Complainants,
vs.
CAROLINE A. LAMAR, ELIZA A. CUNNINGHAM, JANE C. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, Defendants.
} In Equity.

The joint and several answer of Caroline A. Lamar, Eliza A. Cunningham, Jane C. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, defendants, to the bill of com-
35 plaint of Harriet Cazenove Jones and Frank Cazenove Jones, who aver themselves to be administratrix and administrator, with the will annexed, of the estate of Gazaway B. Lamar, deceased.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say—

That they do not know, and therefore cannot say, whether Gazaway B. Lamer did make, execute, and deliver to the Bank of the Republic the bond and mortgage stated in the bill, and they pray for strict proof of the same. These defendants admit on the 31st day of December, 1863, the said Gazaway B. Lamar duly conveyed to Charles A. L. Lamar certain lands, a description of which is to be found in a copy of the deed of conveyance hereto annexed as Ex-

hibit A, to which they pray the usual leave of reference. They admit that the said Charles A. L. Lamar accepted said deed of conveyance and took possession of said lands, but they expressly deny that he did so with full knowledge that said lands and property had been mortgaged to the Bank of the Republic. On the contrary, they charge that the said Charles A. L. Lamar had no notice or knowledge whatsoever of the said mortgage. They admit that
36 said Charles A. L. Lamar departed this life at the time stated in the bill intestate, and that Caroline A. Lamar, one of these defendants, the widow of said intestate, was duly appointed administratrix of his estate, and as such took possession of the lands described in the said deed. These defendants expressly deny that the said bond and mortgage were duly recorded in the county records of Chatham county. They charge that, on the contrary, the said mortgage was not recorded until the seventeenth day of February, in the year of 1865. These defendants admit that the Bank of the Republic, of New York, took proceedings to foreclose said mortgage *said mortgage*, but as the proceedings to foreclose and the claim interposed to said lands are of record, they pray that strict proof of the same may be made, and they refer to the said records for all proceedings had in and about the foreclosure of the said mortgage and the claim made to the lands. They admit that a bill was filed by the National Bank of the Republic, of New York, and by said Gazaway B. Lamar against Caroline A. Lamar as administratrix in the superior court of Chatham county, and that certain proceedings were thereafter had in the said case, all of which appear of record, and to which record they refer hereby, praying strict proof to all of the averments of the said bill touching the said records and the contents thereof. They admit that a bond and mortgage *was*
37 executed by Caroline A. Lamar as administratrix as aforesaid on or about the date charged in the bill, and they refer to the said bond and mortgage for all the contents thereof; but these defendants expressly deny that they are bound by the said bond and mortgage, and they charge that the same were and are utterly void at law and in equity as against these defendants and each of them; and these defendants, having no knowledge or information as to whether the old bond and mortgage were delivered up and cancelled, pray for strict proof of that averment in the bill.

And these defendants, further answering, say that they have been informed that some time in the month of May, 1874, the said last-mentioned bond and mortgage were assigned to the said Gazaway B. Lamar, but whether such assignment was made for value paid by the said Gazaway B. Lamar they do not know or have they any information on the subject, and they pray for strict proof of this averment in the bill; but they expressly deny that said bond and mortgage were duly assigned to the said Gazaway B. Lamar. On the contrary, they charge that on or about the 7th day of April, 1874, the said Gazaway B. Lamar received from the United States a large sum of money, to wit, the sum of $579,343.51, a large part of which sum, to wit, $250,000 or thereabouts, belonged to and was the

property of the estate of Charles A. L. Lamar; that whatever
38 value may have been paid by the said Gazaway B. Lamar for the said bond and mortgage last mentioned was paid out of said monies belonging to the estate of Charles A. L. Lamar; that the said Gazaway B. Lamar held the said bond and mortgage in trust for the estate of Charles A. L. Lamar, and that in equity and good conscience the said Gazaway B. Lamar never became the owner of the said bond and mortgage, and these defendants submit to the honorable court that by virtue of the said bond and mortgage having been purchased with monies of the estate of the said Charles A. L. Lamar the complainants are wholly barred from making any claim on these defendants thereunder or on account of the same, and they pray the same benefit of said defense as if the same had been made by plea.

And these defendants, further answering, say that the said Gazaway B. Lamar, before the time that the said bond and mortgage were assigned to him, promised and agreed with Caroline A. Lamar, who was then the administratrix of the estate of Charles A. L. Lamar, deceased, that when he should recover from the United States Government sufficient of the monies to which the estate of Charles A. L. Lamar was entitled that he would take up the said bond and mortgage with said monies if he had not sufficient funds of his own with which to pay them, and these defendants charge that on or about the 7th day of April, 1874, the said Gazaway B. Lamar re-
39 ceived from the United States Government a large sum of money belonging to the estate of Charles A. L. Lamar, to wit, the sum of $250,000 or thereabouts, which he had in his hands at the time the said mortgage was assigned to him, and that instead of having the said mortgage assigned to him he should have had the same marked cancelled and should have delivered the same to the said administratrix; and these defendants submit that by reason of the premises the said complainants are wholly barred from making any claims on them in respect to the said bond and mortgage, and they pray the same benefit of this defense as if the same had been made by plea.

And these defendants, further answering, say that at the time the said Gazaway B. Lamar had the said bond and mortgage assigned to him he had in his hands a large sum of money, to wit, the sum of $579,343.51, in which the estate of Charles A. Lamar had an interest to the extent of nearly one-half, and that the said Gazaway B. Lamar was, in equity and good conscience, bound not to have the said mortgage assigned to him, but to have taken up the same and to have had the same marked cancelled; and these defendants submit that by reason of the premises said complainants are wholly barred from making any claim on them in respect to the said bond and mortgage, and they pray the same benefit of this defense as if the same had been made by plea.

40 And the defendants, further answering, say that during the war between the States the said Gazaway B. Lamar was engaged in the purchase of cotton for the account of his son, Charles A. L. Lamar, and also in the purchase of cotton in the proceeds of

which Charles A. L. Lamar was interested in some of the transactions to the extent of one-third, and in others to the extent of one-half, and that the said Gazaway B. Lamar so purchased ten thousand bales of cotton or other large number of bales; but what number of bales were for the account of Charles A. L. Lamar, what number of bales were so purchased in the proceeds of which the said Charles A. L. Lamar had an interest to the extent of one-half or one-third these defendants are not advised; that the said Gazaway B. Lamar brought suit in the Court of Claims for the said cotton against the United States, and also in other courts against one Browne and others whose name- are unknown to these defendants; that prior to the time the said Gazaway B. Lamar had the said bond and mortgage assigned to himself, to wit, on or about the 7th day of April, 1874, he had recovered from the United States Government the said sum of $579,343.51 for the proceeds of a part of raw cottons; that at or about the time the said Gazaway B. Lamar was having the said bond and mortgage assigned to himself he wrote the said Caroline A. Lamar, who was then the administratrix of said estate, that he had received said sum of money,
41 and that the estate of Charles A. L. Lamar had an interest therein and would be entitled to a part thereof; that there were upwards of 1,000 bales of cotton invo-ved in lawsuits still pending in which said estate had an interest; that he, the said Gazaway B. Lamar, was prosecuting these suits; that certain attorneys-at-law were suing him for services rendered in the prosecution of claims against the Government, and that there were other suits brought against him. Until all of which suits, both those brought by him and those brought against him, were settled it could not be ascertained what the estate of Charles A. L. Lamar would be entitled to receive from the proceeds of said cotton; that he, the said Gazaway B. Lamar, would take a transfer of the said mortgage, and would hold it until all the cotton suits and lawsuits were settled, and the accounts between himself & the estate settled; and these defendants charge the assignment of the bond and mortgage was made to the said Gazaway B. Lamar, who thereafter held the same subject to the agreements and conditions contained in the said letter as above recited; that the said Gazaway B. Lamar died in the month of October, 1874, and that the suits for cotton which were pending at the time of his death were prosecuted by his executor, and the suits which had been brought against him were defended by his executor, but how many in number these suits were,
42 whether they are still pending, or whether they have all been disposed of, these defendants are not informed.

These defendants aver that Caroline A. Lamar up to the time of her discharge as administratrix of the estate of Charles A. L. Lamar was at all times ready and willing to come to an accounting and settlement with the executor of the said Gazaway B. Lamar touching the said matters, and since the discharge of the said administratrix these defendants have at all times been ready and willing to come to an accounting with the representative of the estate of the said Gazaway B. Lamar touching the said matters, but for the

reason, as these defendants supposed, that all of said suits were not determined there has never been any settlement between the estate of Gazaway B. Lamar and the estate of Charles A. L. Lamar touching the said matters.

Wherefore these defendants submit that the said complainants cannot have any relief from these defendants concerning the said bond and mortgage until such settlement has been had, and they pray the same benefit from this defense as if they had pleaded the same.

And these defendants, further answering, say that on the 21st day of February, 1868, an agreement was entered into between the National Bank of the Republic, of New York, Gazaway B. Lamar, and Caroline A. Lamar, administratrix of the estate of
43 Charles A. L. Lamar, deceased, a copy of which agreement is hereto annexed, marked Exhibit "B," to which the usual leave of reference is prayed; that in and by the said agreement it was, among other things, provided that the said Gazaway B. Lamar, in consideration of the said bond and mortgage so to be executed by the said Caroline A. Lamar, administratrix, was to release and discharge the said mortgaged property from any further claims of his against the estate of Charles A. L. Lamar, present or future, and from any judgements that might be obtained by him thereafter, so that the said property might be absolutely secure to the said Caroline A. Lamar and children. And defendants charge that the said bond and mortgage last mentioned are the bond and mortgage, copies of which are attached as exhibits to complainants' bill; that if the same were originally valid and binding, and if the said mortgage would constitute an existing lien on the lands therein described, had no assignment been made, that by reason of the said agreement last above recited the complainants are barred from claiming any rights or lien under the said bond and mortgage as against these defendants, and they pray the same benefit of this defense as if the same had been made by plea.

And these defendants, further answering, say that in and
44 by the deed made by Gazaway B. Lamar to Charles A. L. Lamar, a copy of which is attached hereto as Exhibit A, the said Gazaway B. Lamar did warrant and covenant forever to defend the lands thereby conveyed unto the said Charles A. L. Lamar, his heirs and assigns, against himself, the said Gazaway B. Lamar, and his heirs; that some years before the date of said deed said lands had been conveyed by Charles A. L. Lamar as security for a debt to his father, the said Gazaway B. Lamar; that, the debt having been paid, the said Gazaway B. Lamar executed the deed, a copy of which is attached as Exhibit A; that the intention of said Gazaway B. Lamar in making said special warranty was so as not to warrant the title to the land against any act, matter, or thing by which the same may have been encumbered or impaired prior to the conveyance made by his son Charles to him; that the said Gazaway B. Lamar fully recognized his liability for an incumbrance put *open* the said lands at the time when he held title to the same, and had he been in possession of sufficient funds would have satisfied the

claim of the Bank of the Republic, but, having no money, he insisted upon the assumption of said debt by Caroline A. Lamar, administratrix of Charles A. L. Lamar, and upon her giving the bond and mortgage sued on and became at the same time her debtor for the same amount. And these de-
45 fendants charge that the said Gazaway B. Lamar, before the said administratrix gave the bond and mortgage, represented to her that he desired that the lands described in said bond and mortgage should be secured to herself and children, and when he recovered enough money from the claims which he had against the Government he would take up the said bond and mortgage and thereby release the said lands from all claims of the said bank; that if the said mortgage created a lien on said lands as against these defendants it ceased to be of any force or effect when the mortgage passed into the hands of said Gazaway B. Lamar, as the payment by him made for said mortgage was in pursuance of said promise made to said administratrix; and these defendants charge that the complainants have no funds or property as representatives of the estate of Gazaway B. Lamar with which to satisfy any judgement which these defendants might obtain against them for said sum of 80,000 and interest; and the defendants show that by reason of the premises the said complainants are wholly barred from making any claim against them on said bond and mortgage, and they pray the same benefit of this defense as if the same had been made by plea.

And these defendants, further answering, say that they admit the sales of portions of said tracts of land as charged in the bill,
46 and they admit that — administratrix of the estate of Charles A. L. Lamar never paid to the said complainants any portion of the proceeds of said sales.

And these defendants, further answering, say that they admit that the said administratrix of the estate of Charles A. L. Lamar did at the time averred in the bill petition the ordinary of Chatham county for a discharge from her trust, being fully advised by counsel learned in law that there was no further necessity for the administration longer to be kept open, and that thereafter she was duly dischaged.

And these defendants, further answering, say that, they being the heirs of Charles A. L. Lamar, did, on or about the date charged in the bill, enter into an agreement, a copy of which is attached to the bill.

And these defendants, further answering, say that before the said administratrix was discharged from her trust she made due and legal advertisement, as required by the laws of the State of Georgia, once a month for three months, calling upon all persons interested to come forward and show cause, if any they had, why she should not be discharged from her said trust, and that, no such cause being shown, she was regularly and duly discharged.

And these defendants, further answering, deny that the
47 defendant Caroline A. Lamar is accountable to the complainants for the proceeds of the parts of said lands sold, and they

deny that any of the defendants are bound to account to the said complainants for any amounts received by them from the estate of Charles A. L. Lamar, and also that the complainants are entitled to subject the said lands to the said mortgage or to have any judgement against these defendants.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint material or necessary for these defendants to make answer unto and not herein and hereby well and sufficient- answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Solicitors for Defendants.

48 EXHIBIT A.

This indenture, made the thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-three, between Gazaway B. Lamar, of the county of Chatham, State of Georgia, of the first part, and Charles A. L. Lamar, of the city of Savannah, Chatham county, State of Georgia, of the second part, witnesseth:

That the said party of the — part, for and in consideration of the sum of one hundred thousand dollars to him in hand paid by the said Charles A. L. Lamar at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents doth grant, bargain, sell, remise, release, and confirm, unto the said party of the second part and his heirs and assigns all those lots & wharves situate, lying, & being in the city of Savannah, bounded on the east by the lot and wharf of the hydraulic press, on the south by a street, on the west by Willink's lots, & on the north by the Savannah river, together with lots lying south of same, with same eastern boundary; together with all the lands hitherto owned by me lying east & south of same, containing seventy-five acres, be the same more or less, subject to the provisions of a contract made 18th of November, 1862, by the Atlantic and Gulf railroad; together with all and singular the houses, out-houses, edifices, buildings, stables, yards, gardens,
49 liberities, privileges, easements, commodities, emoluments, hereditaments, rights, members, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property, and possession, claim, and demands whatsoever, in law or in equity, of the said

G. B. Lamar of, in, or to the same or any part or parcel thereof, with the appurtenances; to have and to hold the said wharves, lots, and lands and all and singular other the premises hereby granted, bargained, sold, aliened, and confirmed, with the hereditaments and appurtenances, unto the said Charles A. L. Lamar, his heirs and assigns, to the only use and behoof of the said Charles A. L. Lamar, his heirs and assigns, forever, and to and for no other use, intent, or purpose whatsoever; and, lastly, the said Gazaway B. Lamar and his heirs, the said wharves, lots, and lands, and premises, unto said Charles A. L. Lamar, his heirs and assigns, against the said Gazaway B. Lamar, his heirs, shall and will warrant and forever defend by these presents.

In witness whereof the said Gazaway B. Lamar has hereunto set his hand and seal the day and year first above written.

GAZAWAY LAMAR. [L. S.]

Signed and deliver- in presence of us.

M. SPAIN VERDERY.
LEVI S. HART,
Justice of the Peace, Chatham County, Georgia.

50 EXHIBIT B.

Memorandum of agreement made and entered into this twenty-first day of February, 1868, between the National Bank of the Republic, of New York, G. B. Lamar, and Mrs. Caroline A. Lamar, administratrix of C. A. L. Lamar, deceased, witnesseth as follows:

1. That a decree be applied for, and, if the court consents, obtained at the present term of Chatham superior court, or, if postponed by providential cause, as soon thereafter as practicable, authorizing and empowering the said Caroline A. Lamar, as administratrix, to execute to the said The National Bank of the Republic, of New York, a bond in the sum of one hundred and sixty thousand dollars, conditioned for the payment of eighty thousand dollars, with interest from this date, the principal sum payable in ten equal annual instalments, and the interest accrued each year on the entire sum unpaid to be also paid annually, and to secure said payments to execute a mortgage to said bank on the property known as Lamar's Press and lands attached, as described in a mortgage by the said G. B. Lamar to R. J. Lowry, president, and recently foreclosed in Chatham superior court, on condition that said mortgage may be foreclosed by the usual process not until six months after any instalment of said bond shall be due and unpaid; when so foreclosed it may be for the entire debt then unpaid, whether due or not;

51 Caroline A. Lamar to waive her right of dower as to said bank.

2. On the execution and delivery of the bond and mortgage hereinbefore provided for the National Bank of the Republic to cancel & satisfy the mortgage heretofore executed on the same property by the said G. B. Lamar, to credit the sum of eighty thousand dollars on the bond of said G. B. Lamar, and to retain said bond for the balance due on it as against the said G. B. Lamar only.

3. The said G. B. Lamar, in consideration of the said bond and

mortgage so to be executed by the said Caroline A. Lamar, administratrix, to release and discharge the said mortgaged property from any further claims of his against the estate of C. A. L. Lamar, present or future, and from any judgements that may be obtained by him hereafter, so that said property may be absolutely secured to the said Caroline A. Lamar and children; and, further, the said G B. Lamar to give a credit of eighty thousand dollars on the account between him and the estate of C. A. L. Lamar, without committing said estate to the existence of said claims.

NATIONAL BANK REPUBLIC,
By JNO. J. CRANE, *Vice-President.*
G. B. LAMAR.
CAROLINE A. LAMAR, *Adm'x,*
Pr. THOS. E. LLOYD, *Att'y.*

52 *General Replication.*

In the Circuit Court of the United States for the Southern District of Georgia, Eastern Division.

HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, Adm'ors Estate G. B. Lamar, *C. T. A.*, Compl'ts,
and
CAROLINE A. LAMAR *et al.*, Defend'ts.

The replication of Harriet Cazenove Jones and Frank Cazenove Jones, complainants, to the answer of said defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and
53 not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

GEORGE A. MERCER,
Solic. for Compl'ts.

Filed in my office November 1st, 1886.
S. F. B. GILLESPIE,
Deputy Clerk.

Petition of Defendants for Leave to File Cross-Bill.

To the judges of the circuit court of the United States for the southern district of Georgia (eastern division), having and exercising equity jurisdiction:

The petition of Caroline A. Lamar, Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar respectfully showeth that Harriet Cazenove Jones and Frank Cazenove Jones, as administratrix and administrator *de bonis non*, with the will annexed, of the estate of Gazaway B. Lamar, deceased, who your petitioners aver are citizens and residents
54 of the State of New York, brought their bill to September, 1886, rules of this court against petitioners for the foreclosure of a mortgage and for other relief, as will more fully appear, reference being had to said bill, which is of file in this court; that your petitioners have answered said bill and now desire to file a cross-bill against administratrix and administrator praying for certain causes set up therein, that they may be enjoined from foreclosure the said mortgage, for an accounting from said administratrix and administrator, and for other and further relief, and petitioners here show to the court the said cross-bill and pray that they may have leave to file the same; that subpœna may issue thereon addressed to the said administratrix and administrator and to their solicitor of record, George A. Mercer, Esq., and that service of the same may be made as provided by the acts of Congress concerning service of process on non-resident defendants or by serving the said solicitor of record or in such other manner as the court may direct.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
FLEMING G. DU BIGNON,
Solicitors for Petitioners.

Filed in office Jan'y 14th, 1887.

55 *Order for Leave to File Cross-Bill.*

In Circuit Court of U. States, So. District of Georgia.

HARRIET C. JONES and F. C. JONES, Adm'x & Adm'r Estate of G. B. Lamar, Complainants, and CAROLINE A. LAMAR *et al.*, Defendants. } In Equity.

On motion of solicitors for defendants, it is ordered and decreed that the said defendants have leave to file in this cause the cross-bill exhibited to the court with their said motion, and that subpœna thereon shall issue, returnable to the February rules of this court, and that notice of the same be made on Henry R. Jackson, Esq., and George A. Mercer, Esq., solicitors for said complainants in said cause, and that the defendants in said cross-bill, who are the com-

plainants in said original bill, shall demur & plead to or answer said cross-bill not later than at the April rules of this court, and that as soon as said cross-bill is answered replication shall be filed thereto by the complainants in said cross-bill, so that said cause and said cross-bill shall stand for hearing at April term of this
56 court.

In open court Jan'y 14th, 1887.

Consented to.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN, &
F. G. DU BIGNON,
For Defendants to Original Bill.
HENRY R. JACKSON,
GEO. A. MERCER,
Solic's for Compl'ts.

Be it so.

EMORY SPEER,
U. S. Judge.

Filed in office Jan'y 14th, 1887.

M. ERWIN, *Dep. Clerk.*

Cross-Bill of Defendants.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia.

To the judges of the circuit court of the United States for the eastern division of the southern district of Georgia:

Caroline A. Lamar, Eliza A. Cunningham, Jane C. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, who aver themselves to be citizens of the State of Georgia and residents of the eastern division of the southern district thereof, bring this their bill against Harriet Cazenove Jones and Frank Caze-
57 nove Jones, as administratrix and administrator *de bonis non*, with the will annexed, of the estate of Gazaway B. Lamar, deceased, whom your oratrices aver are citizens and residents of the State of New York; and thereupon your oratrices complain and say—

That on the 21st day of July, 1886, the said Harriet Cazenove Jones and Frank Cazenove Jones, as administratrix and administrator aforesaid, brought their bill in *the* honorable court for the foreclosure of a certain mortgage, a copy of which is attached to the said bill, to subject certain lands in said mortgage described to the lien thereof, for an accounting from your oratrices concerning monies received by them from the estate of Charles A. L. Lamar, for a decree against your oratrices for certain sums of money, and for other relief, all of which will more fully appear, reference being had to the said bill, and that your oratrices have answered the said bill.

And your oratrices, further complaining, show your oratrix Caro-

line A. Lamar is the widow and your other oratrices the children of Charles A. L. Lamar, who died intestate in the month of April, 1865, and that they are the sole heirs and distributees of his estate; that when the city of Savannah was captured by the Federal forces under Gen'l Sherman, in December, 1864, the said Gazaway
58 B. Lamar had in his possession, stored in the city of Savannah, a large number of bales of cotton, in which or in the proceeds of which the said Charles A. L. Lamar had an interest to the extent of one-third; that your oratrices are not informed of the number, but charge that the same amounted to more than two thousand bales of cotton. 167 bales of sea-island cotton so held by the said Gazaway B. Lamar were seized by the United States Government, conveyed to the North, sold, and the proceeds thereof passed into the Treasury of the United States; that of said cotton so held by said Gazaway B. Lamar 1,759 bales of uplands were seized by the United States Government, were taken North, sold, and the proceeds passed into the Treasury of the United States.

And your oratrices further show that in or about the year 1863, the exact time being unknown to your oratrices, the said Gazaway B. Lamar and the said Charles A. L. Lamar entered into an agreement under which 348 bales of cotton were bought, the two being equally interested in the profits to be derived therefrom; that some of said 348 bales were bought by Gazaway B. and some by Charles A. L. Lamar, and that Charles A. L. Lamar contributed more money to the purchase of the said 348 bales than did the said Gaza-
59 way B.; that said 348 bales remained in the possession and under the control exclusively of the said Gazaway B., and, being in his possession in the city of Savannah when it was captured by the Federal forces, in 1864, the said 348 bales were seized by the United States Government, carried North, sold, and the proceeds thereof passed into the Treasury of the United States.

And your oratrices further show that prior to the capture of the city of Savannah by the Federal forces, in 1864, the said Gazaway B. Lamar and the said Charles A. L. Lamar had made advances on 275 bales of cotton which they had brought for accounts of parties unknown to your oratrices, such advances representing about the original cost of the said cotton; that said cotton was in the possession of the said Gazaway B. Lamar when the city of Savannah was captured by the Federal forces; that it was seized by the United States Government, sent North, sold, and the proceeds thereof passed into the Treasury of the United States.

And your oratrices further show that at and before the time when the said Gazaway B. Lamar and the National Bank of the Republic filed their bill in the superior court of Chatham county against Caroline A. Lamar, as administratrix of the estate of Charles A. L. Lamar, as is averred in the said bill filed in this honorable
60 court by the defendants hereto, the said Gazaway B. Lamar represented to the said Caroline A. Lamar that suit had been or would be brought in the Court of Claims against the United States Government for all of said bales of cotton and for others in which the estate of Charles A. L. Lamar was interested, and that out of the

monies to be recovered from the United States a settlement could be & would be made of the bond and mortgage which he was then endeavoring to induce her to give to the said National Bank of the Republic; that said Gazaway B. Lamar fully recognized his liability for encumbering said lands with a mortgage, as at the time when he made the mortgage to the Bank of the Republic he held the title to said lands, which had been conveyed to him by said Charles A. L. Lamar only as security for a debt which his son Charles sued him — and which was paid to him before he reconveyed the same, in 1863; that said G. B. Lamar was at that time without money or property which he could convert into money, and represented to your oratrix C. A. Lamar that it was absolutely necessary that she should assume the obligation to said bank, and that if she would do so he would give the estate credit in the accounts between himself and the estate for the sum of $80,000, so that when the proceeds of the said cottons were recovered from the Government the amount which he might owe to the National Bank of the Republic on the said bond and mortgage would be offset
61 by the same amount which would be due by the said Gazaway B. Lamar to her, and that he, the said Gazaway B., would take up and settle the said bond and mortgage; that, being persuaded by these promises, representations, and agreements so made by the said Gazaway B. Lamar, the said Caroline A. Lamar entered into an agreement, bearing date the 21st day of February, 1868, between the National Bank of the Republic, Gazaway B. Lamar, and herself, a copy of which agreement is attached to the answer of your oratrices to the bill filed by the defendants hereto; and in and by the third clause of the said agreement the said Gazaway B. Lamar, in consideration of the said bond and mortgage to be executed by the said Caroline A. Lamar, administratrix, was to release and discharge the said mortgaged property from any further claims of his against the estate of Charles A. L. Lamar, present or future, and from any judgment that might be obtained by him thereafter, so that the property described in the mortgage might be absolutely secured to the said Caroline A. Lamar and her children; and the said Gazaway B. Lamar was to give a credit of $80,000 on the account between him and the estate of Charles A. L. Lamar; and under these circumstances the decree was rendered in the
62 case instituted by the said Gazaway B. Lamar and the National Bank of the Republic; and the said Caroline A. Lamar, administratrix as aforesaid, executed the said bond and mortgage, and by which decree it is provided that said G. B. Lamar should give the estate a credit for said sum of $80,000.

And your oratrices further show that on or about the 7th day of April, 1874, the said Gazaway B. Lamar recovered from the United States *of* Government and received the proceeds of all the bales of cotton hereinbefore mentioned, being paid for 91 bales of sea-island cotton at the rate of $231.75 per bale and for the other cottons at the rate of $175.33 per bale; that prior to the recovery of said sums of money from the Government the said Gazaway B. Lamar had frequently communicated with the said Caroline A. Lamar concern-

ing the said cotton claims, and had always given her to understand that there would be a large sum of money coming to the estate of Charles A. L. Lamar therefrom, and that he recognized not only his obligation to account with the estate, but also his duty in regard to taking up the said bond and mortgage; and your oratrices expressly charge that when the said sum- were so recovered by the said Gazaway B. Lamar on an accounting had between the said Gazaway B. and the estate of Charles A. L. Lamar there would have been due to the said estate upwards of $200.000,
63 crediting the estate with the $80,000 mentioned in the said agreement of February 21st, 1868, and interest, and charging it with the amount of the said bond and the interest to accrue thereon, and that if the said Gazaway B. Lamar had on hand, after paying his other debts out of that part of the proceeds of the recovery which belonged to him, an amount not sufficient to take up the said mortgage there was in his hands much more than enough money from that source belonging to the estate of Charles A. L. Lamar than would have paid it in full; that on the 8th day of May, 1874, the said Gazaway B. Lamar informed the said Caroline A. Lamar that suits had been brought against him by attorneys-at-law for services rendered in the prosecution of the claims against the Government and by others; that the debt due to the National Bank of the Republic was then upwards of $65,000; that he would take a transfer of said mortgage and hold it until all the cotton suits and lawsuits were settled and the accounts between himself and the estate of Charles A. L. Lamar were settled; that there were upwards of a thousand bales of cotton still in suits then pending, which, if gained, would amount to $400,000, besides 2,100 bales belonging to the Importing and Exporting Company, in
64 which the estate of Charles A. L. Lamar held 85 out of 1,856 shares; that the said Caroline A. Lamar believed that the statements made by the said Gazaway B. Lamar furnished a reason why he should not at that time account with the estate of Charles A. L. Lamar, and, besides, not knowing how the accounts between the two stood, she had absolutely no means of deriving this information, all the books of account and the other papers which would throw light on the transactions between the said Charles A. L. Lamar and his father being in possession of the said Gazaway B. Lamar; that in the month of October, in the same year (1874), the said Gazaway B. Lamar departed this life, leaving a last will and testament, by which he directed that after all his cotton claims should be collected, including those in which the estate of Charles A. L. Lamar had an interest, an account should be taken by his executor, and the net balance coming to the estate of Charles A. L. Lamar, as well as to the estate of William W. Cheever and of the testator, should be placed to the private account of each, and that they should settle the account with the estate of the said Charles A. L. Lamar and pay or receive the balance; that the said Caroline A. Lamar, while administratrix of the estate of Charles A. L. Lamar,
65 frequently communicated with G. De Rosset Lamar, who was the executor of the will of Gazaway B. Lamar, and was from

time to time informed by him that by reason of suits still pending for cotton in which the estate of Charles A. L. Lamar had an interest and for other reasons an account could not be had between himself and said administratrix; *the* the said executor never made any claim upon her for payment of the said bond, but recognized that the same as well as the mortgage was held by him as a trust, and that nothing was to be done with either the bond or mortgage until an account should be had between them, when the said bond should appear as a credit to the estate of Gazaway B. Lamar to the amount which the said Gazaway B. Lamar paid for the same to the National Bank of the Republic; that on the 9th day of December, 1885, the said G. De Rosset Lamar, executor, without any demand on your oratrices being first made and without disavowing the trust under which he held the said bond and mortgage, filed his bill for the foreclosure of said mortgage and for other relief in the superior court of Chatham county, Georgia.

And your oratrices further show that, there being no further necessity for administration on the estate of Charles A. L.
66 Lamar, they made the agreement a copy of which is attached to the bill filed by the said Harriet Cazenove Jones and Frank Cazenove Jones in this honorable court; and thereafter, to wit, on the 10th day of June, 1883, the said Caroline A. Lamar was discharged as administratrix; that all the property of the estate of Charles A. L. Lamar vested in his heirs, and that the right to an accounting from the said representatives of the estate of Gazaway B. Lamar accrued to your oratrices.

And your oratrices further charge, on information and belief, that the said defendants have not any property of the said Gazaway B. Lamar in their hands to answer any decree which your oratrices may obtain against them, and that the estate of said Gazaway B. Lamar is practically insolvent; that the bond and mortgage on which the said representatives of said Gazaway B. Lamar sue are a cloud on the title of your oratrices to said land. Inasmuch, therefore, as your oratrices are remediless by the strict rule of the common law and can only obtain adequate relief in a court of equity, where matters of this sort are cognizable and relievable—

To the end that the said defendants may full, true, and perfect answer make to all and singular the matters and things
67 hereinbefore set forth, an answer under oath from said defendants being hereby expressly waived; that until an accounting is had with your oratrices and until the said defendants have had a settlement with them the defendants may be enjoined and restrained from prosecuting their said suit on said bond and mortgage and from selling or otherwise disposing of the said bond and mortgage; that an accounting may be had by said defendants with your oratrices for all monies received by Gazaway B. Lamar from the United States for cotton in which or in the proceeds of which the said estate of Charles A. L. Lamar had an interest, and for all monies received by said Gazaway B. Lamar from any other source for property seized during the war in which the said Charles A. L. Lamar or his estate had an interest, and that a decree may be

rendered in favor of your oratrices for the amount which will be found to be due them on such accounting; that the said defendants may be decreed to perform the said contract and agreement made and entered into by the said Gazaway B. Lamar on February 21st, 1868, and in accordance with the terms thereof to release and discharge the said land from all claims which the said Gazaway
68 B. Lamar at any time had against it, so that the said lands may be absolutely secured to your oratrices; that any payment which the said Gazaway B. Lamar may have made to the National Bank of the Republic for the said bond and mortgage may be decreed to have been a satisfaction of the said mortgage and bond; that the defendants may be decreed to surrender the said bond and mortgage; that the said bond and mortgage may be cancelled; and if this honorable court should decide that the said defendants are entitled to a credit on the accounting to be had as hereinbefore prayed in the amount paid by said Gazaway B. Lamar to said bank for said bond and mortgage, that the said defendants may be charged with the sum of $80,000 mentioned in the agreement of February 21st, 1868, and in the decree rendered on the bill filed by said Gazaway B. Lamar and the National Bank of the Republic, with interest on said sum from February 21st, 1868, and that said sum and interest may be included in the accounting; that the said sum and interest, besides the amount due your oratrices on cotton account, may be set off against the amount paid by the said Gazaway B. Lamar for the bond and mortgage, and that your oratrices
69 may have a decree for the difference; that the case made by the bill filed by said defendants in this honorable court may be tried with the case made by this bill; that one decree may be rendered in both cases, and that your oratrices may have such other and further relief as the nature of their case may require may it please your honors to grant unto your oratrices the writ of subpœna, to be directed to the said defendants and to their solicitor of record, George A. Mercer, requiring them, on a day certain and under penalty to be named in the writ, to appear in this honorable court to answer all and singular the premises and to stand to, abide by, and perform such decree as may be made; and your oratrices also pray that service of this bill and of subpœna issue- hereon may be made as provided by the acts of Congress concerning service of process on non-resident defendants, or that service of a subpœna issued hereunder may be made on George A. Mercer, the solicitor of record of said defendants in the said suit brought on said bond and mortgage, or in such other manner as the court may direct; and your oratrices will ever pray, &c.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
FLEMING G. DU BIGNON,
Solicitors for Complainants in Cross-Bill.

70 *Subpœna on Cross-Bill.*

Equity subpœna to appear and answer.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia.

HARRIET C. JONES, FRANK C. JONES, Adm'x & Ad'r G. B. Lamar, Complainant-, and CAROLINE A. LAMAR *et al.*, Defendant-. } Bill In Equity. Cross-Bill.

The President of the United States of America to Harriet Cazenove Jones and Frank Cazenove Jones, as administratrix and administrator *de bonis non*, with the will annexed, of the estate of Gazaway B. Lamar, deceased, and to George A. Mercer, their solicitor of record, Greeting:

For certain causes offered before the judges of the 5th circuit court of the United States for the eastern division, southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of said court, in the city of Savannah, at rules to be had on the first Monday in February next, to answer to those things
71 which shall then and there be objected to you in a cross-bill filed by the defendants to the bill in the above-stated case, and to do further and receive what the said court shall have considered in that behalf, and this you may in nowise omit under penalty of five hundred dollars; and have here this writ.

Seal of the United States Circuit Court, Georgia.

Witness the Honorable M. R. Waite, Chief Justice of the United States Supreme Court, this 14 day of January, in the year of our Lord one thousand eight hundred and eighty-seven.

MARION ERWIN,
Deputy Clerk.

MEMORANDUM.—The defendants are to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso*.

MARION ERWIN,
Deputy Clerk.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Sol'rs for Compl's in Cross-Bill.

Service of the within subpœna acknowledged and all further service waived.
January 14th, 1887.

GEO. A. MERCER,
Solic. for Compl'ts.

Issued 14 day of Jan'y, A. D. 1887.

M. ERWIN,
Dep. Clerk.

Filed in clerk's office January 14th, 1887.

M. ERWIN,
Deputy Clerk.

72 *Entry of Appearance to Cross-Bill.*

In the Circuit Court of the U. S. for the Eastern Division of the Southern District of Ga., to February Rules, 1887.

CAROLINE A. LAMAR *et al.*
vs.
HARRIET CAZENOVE JONES, Adm'x, *et al.* } In Equity. Cross-Bill.

The defendants to the above cross-bill, Harriet Cazenove Jones, adm'x, and Frank Cazenove Jones, adm'or, estate G. B. Lamar, appear at the February rules, 1887, of said court and, by their solicitors, enter their appearance in the clerk's office to said suit and cross-bill.

GEORGE A. MERCER,
H. R. JACKSON,
Solic's for Defend'ts to Cross-Bill.

H. H. KING, *Cl'k.*

Filed in office February 7, 1887.

H. H. KING, *Cl'k.*

Order Extending Time to File Answer — Cross-Bill.

In the Circuit Court of the U. S. for the Eastern Division of the So. Dist. of Ga., to February Rules, 1887.

CAROLINE A. LAMAR *et al.*, Compl'ts,
vs.
HARRIET CAZENOVE JONES, Adm'x, *et al.*, Defend'ts. } Cross-Bill.

73 An order having been made on the — day of —— requiring the defendants to the above cross-bill to file their answer not later than the April rules, 1887, and, it being made to appear to the court that for good and sufficient reasons shown the said defendants cannot file their said answer at said April rules, on motion of solicitors for defendants, it is ordered that the time for filing said answer be extended to a day not later than May rules, 1887, and

that upon the filing of said answer on or before said day the said complainants may at once file their replication and bring said cause to issue.

In open court, M'ch 30, 1887.

EMORY SPEER, *Judge.*

Filed M'ch 30, 1887.

M. ERWIN,
Dep. Clerk.

74 *Answer to Cross-Bill.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET C. JONES and FRANK C. JONES, as Administratrix and Administrator of the Estate of G. B. Lamar, with the Will Annexed, Complainants, and CAROLINE A. LAMAR *et al.*, Defendants. } In Equity.

The answer of Harriet Cazenove Jones, administratrix, and of Frank Cazenove Jones, administrator, to the cross-bill filed by said defendants.

2. These defendants to the said cross-bill, making the usual reservations, answering, say that they admit that when the city of Savannah was captured by the Federal forces under General Sherman, in December, 1864, the said Gazaway B. Lamar had in his possession, stored in the city of Savannah, a large number of bales of cotton, in the proceeds and profits of which said cotton the said Charles A. L. Lamar had an interest; that the said cotton or portions of the same had been purchased or acquired by the said Gazaway B. Lamar and the said Charles A. L. Lamar on joint account as copartners, and was held by said parties subject to the future profits to be realized therefrom upon an adjustment and settlements of all
75 accounts between said parties as copartners as aforesaid or otherwise.

And these defendants, further answering, do not admit but demand strict proof of the statements contained in said cross-bill, to the effect that in or about the year 1863 the said Gazaway B. Lamar and the said Charles A. L. Lamar entered into an agreement under which three hundred and forty-eight (348) bales of cotton were bought, the two being equally interested in the profits to be derived therefrom; that some of said 348 bales were bought by Gazaway B. and some by Charles A. L. Lamar, and that Charles A. L. Lamar contributed more money to the purchase of the said 348 bales than did the said Gazaway B., and that said 348 bales remained in the possession and under the exclusive control of the said Gazaway B. Lamar; and of the further statement in said cross-bill that prior to the capture of Savannah, in 1864, the said Gazaway B. Lamar and the said Charles A. L. Lamar had made advances on two hundred and seventy-five (275) bales of cotton which they had bought for account of parties

unknown, the said advances representing about the original cost of said cotton; and of the further statement that when the city of Savannah was captured by the Federal forces the said Gazaway B. Lamar had in his possession thirty-two (32) bales of cotton belonging to the said Charles A. L. Lamar and one hundred and thirty-six bales of cotton (136) on which the said Charles A. L. Lamar had made advances to the full value thereof.

And these defendants, further answering, say that on the
76 seventh day of May, 1869, the said Caroline A. Lamar, administratrix as aforesaid, addressed a letter to the said Gazaway B. Lamar, in which she asked him to give to her the necessary data in reference to the cotton so held by him in which the said Charles A. L. Lamar had an interest, so as to enable her to prosecute said claims in the event of his death.

That on the eighth day of May, 1869, the said Gazaway B. Lamar addressed his reply to her as administratrix of C. A. L. Lamar at Savannah and furnished to her the desired information, as follows—that is to say, that he made claim for the joint account of the estate of said Charles A. L. Lamar and himself for thirty-two (32) bales of sea-island cotton, one hundred and thirty-six (136) bales of cotton bought of F. L. Gue, one hundred (100) bales of cotton bought of Meinhard, and one hundred and twelve (112) bales of cotton bought of Meinhard and paid for by said Charles A. L. Lamar, the rest, except the thirty-two bales, being paid for by said Gazaway B. Lamar.

That he also made claims for the joint account, one-third to each of W. W. Cheever, Charles A. L. Lamar, and himself for ninety (90) bales of sea-island cotton paid for by himself and for seventy-six (76) bales of sea-island cotton paid for by himself, and for the following lots of upland cotton: Four hundred and twenty-two (422) bales, six hundred and twenty-two (622) bales, four hundred (400) bales, one hundred and forty-one (141) bales, seventy-one (71) bales, and fifty-seven (57) bales, all paid for by himself; and the said Gazaway
B. Lamar further stated that he had no account of any other
77 cotton in which the said Charles A. L. Lamar had the whole or a part interest; that the interest on the purchases of said cottons and the necessary expenses since would consume a great proportion of the profits in which alone the estate of said Charles A. L. Lamar was interested, except the thirty-two (32) bales; and the said Gazaway B. Lamar, in response to the inquiry of said Caroline A. Lamar, administratrix, further stated as follows: "Independently of which, you remember that I rendered a *pro forma* account for losses on the guano and balance of account due me, besides the cotton transactions."

And these defendants, further answering, say that the copartnerships existing between the said Gazaway B. Lamar, Charles A. L. Lamar, and W. W. Cheevers included large joint transactions in guano besides said transactions in cotton, and that in said transactions in guano said Charles A. L. Lamar had become indebted to a large amount to the said Gazaway B. Lamar; that the moneys furnished for the joint transactions in guano were substantially furnished by the said Gazaway B. Lamar or up- his credit, and the

state of the accounts in said guano and in said cotton transactions appear clearly from the books of account of said copartnerships kept by the said Gazaway B. Lamar.

That the existence of said copartnership in guano transactions and the indebtedness of the said Charles A. L. Lamar and of his estate to the said Gazaway B. Lamar on said account were well known to the said Caroline A. Lamar, administratrix as aforesaid,
78 and were fully admitted and acknowledged by her. In a letter addressed by her to the said Gazaway B. Lamar on December fourth, 1866, she expressed the hope that the cotton or its equivalent may be restored, and says, "The indebtedness of dear Charlie's estate to you broods like a horrid nightmare over me, and I would like during your lifetime to have all things settled between us." At said date the estate of said Charles A. L. Lamar was not indebted to said Gazaway B. Lamar to any considerable extent, if at all, on cotton account and did not become indebted on said mortgage until the same was assigned to said Gazaway B. Lamar, on May seventh, 1874. On December twenty-seventh, 1867, she again addressed the said Gazaway B. Lamar and said, "Please tell me whether this mortgage (referring to the original mortgage made by said Gazaway B. Lamar to the Bank of the Republic, of New York, dated January fourteenth, 1861) is included in the debt to you, and therefore when the eighty thousand dollars ($80,000) is paid the bank whether the indebtedness of the estate to you will be cancelled to that amount." On June ninth, 1873, she addressed the said Gazaway B. Lamar in writing and said (referring to the probability of his recovering the cotton claims), "I sometimes think I may not live to see the fulfilment of my wishes, viz.; not to be rich, but to be free from debt." In the agreement entered into on the twenty-first day of February, A. D. 1868, between the said Gazaway B. Lamar, the National Bank of the Republic, of New York, and the said Caroline A. Lamar, as administratrix of the estate of said Charles A. L. Lamar, made Exhibit
79 B to the answer of the said defendants to the original bill pending in this honorable court and concluded prior to the execution of the bond and mortgage by said administratrix to the National Bank of the Republic in New York on March seventeenth next thereafter, it is provided that the said Gazaway B. Lamar shall give a credit of eighty thousand dollars on the account between him and the estate of C. A. L. Lamar; and these defendants say that this was a solemn admission made by said administratrix and binding upon the estate she represented of the existence of such account and of the indebtedness of her said estate, and that said agreement containing said admission was made to influence subsequent action between said parties, which was afterwards had, based upon the faith thereof; and defendants say that at said date the books of said copartnership transactions kept by said Gazaway B. Lamar showed a large balance of indebtedness amounting to some two hundred thousand dollars due by the estate of said C. A. L. Lamar to said Gazaway B. Lamar and based almost entirely upon the said guano transactions; and these defendants further say that in the year 1881

the said complainants in said cross-bill desired to sell and realize on certain portions of said land included in the lien of the mortgage given by the said Caroline A. Lamar, as administratrix as aforesaid, on March seventeenth, 1868, and that the proposers declined to take said land unless the lien of said mortgage thereon should be released by De Rosset Lamar, the executor of the last will
80 of said Gazaway B. Lamar, then deceased; and these defendants say that the said Caroline A. Lamar, as administratrix as aforesaid, on May twenty-third, 1881, wrote to the said executor requesting him to release said land from said lien, stating that such release could not effect the interests of the estate of said G. B. Lamar, and in said letter the said Caroline A. Lamar said "It is the mortgage assumed by me for my husband's and your father's joint and equal indebtedness to the Bank of the Republic for moneys borrowed on account of a guano speculation;" and these defendants say that this was a written recognition of an indebtedness on guano account still subsisting and unpaid, and was binding upon the estate of said Charles A. L. Lamar and the distributees thereof, and that the said De Rosett Lamar is executor as aforesaid, relying upon the truth of the statements contained in said letter, did release the lien of said mortgage on said lands, which said release enured to the benefit of said complainants to said cross-bill.

And these defendants, further answering, say that they do not admit but deny that at and before the time when the said Gazaway B. Lamar and the National Bank of the Republic, of New York, filed their bill in the superior court of Chatham county against the said Caroline A. Lamar, as administratrix of the estate of Charles A. L. Lamar, *as administratrix of the estate of Charles A. L. Lamar*, the said Gazaway B. Lamar represented to her that the bond and mortgage she was to execute to the National Bank of the Re-
81 public in New York would be paid out of the proceeds of cotton to be collected in the Court of Claims, or that she was to rely upon the satisfaction of the same from this source, or that the said Gazaway B. Lamar admitted or recognized any liability on his part to the estate of said Charles A. L. Lamar by reason of the bond and mortgage executed by him on the fourteenth day of January, 1861, or that he would give the estate of said C. A. L. Lamar credit in the accounts between himself and said estate for the sum of eighty thousand dollars so as to enable her to plead or use in any way said amount as an offset against the claim of said bank in said bond and mortgage. On the contrary these defendants say that the agreement entered into between the said bank, said G. B. Lamar, and said Caroline A. Lamar, administratrix, and set up by said complainants as an exhibit to their answer to the original bill, shows the terms and considerations upon which said new bond and mortgage were to be given, and that all conversations, representations, and other agreements, if any, are merged therein. And these defendants say that so far from there being any understanding or agreement that said new bond and mortgage were to be paid out of the proceeds of cotton claims, the said bond and mortgage provided on their face that they were to be paid in equal annual instalments of eight thousand

dollars by said administratrix, some of which instalments were in fact paid by her.

82 And these defendants further say that the record of the bill filed in Chatham superior court, under the decree in which said equity suit the said bond and mortgage were given, shows that the offer of said National Bank of the Republic to accept said bond and mortgage in lieu of said prior bond and mortgage for a larger sum and then reduce to foreclosure was made by way of compromise, and was considered by court and jury a proper settlement and for the best interests of said estate.

And defendants say that the said administratrix in said proceeding acted under the advice and counsel of her solicitors, Thomas E. Lloyd, Esq., who represented her in court, and that in a letter to said Gazaway B. Lamar, dated January 20th, 1868, she informs him that she was consulting as to her proper course with her friend and relative, George S. Owens, "in whose legal judgement and practicable sense," she says, "Charlie (her husband) had unbounded confidence."

And these defendants, further answering, say that by the third clause of said agreement of February twenty-first, 1868, the said G. B. Lamar, in consideration of the execution of said bond and mortgage by the said executrix, was to release and discharge the said mortgaged property from any further claims of his against the estate of C. A. L. Lamar, present or future, and from any judgement that might be obtained by him thereafter, and to give a credit of eighty thousand dollars on the account between him and the estate of C. A. L. Lamar.

83 And these defendants say that it never was the intention or purpose of said agreement to extinguish the indebtedness of the estate of C. A. L. Lamar to said G. B. Lamar, outside of said bond and mortgage, but only to credit said indebtedness with eighty thousand dollars. And defendants say that this was done at once in good faith by said G. B. Lamar, who entered upon the copartnership account in the copartnership books, in his own handwriting, said credit of eighty thousand dollars, as will appear, reference being had to said account; and that the indebtedness of the estate of said C. A. L. Lamar to said G. B. Lamar, outside of said bond and mortgage, was reduced by said credit eighty thousand dollars.

And these defendants say that by said agreement said new bond and mortgage was made and recognized an express and subsisting claim and lien upon the estate of said C. A. L. Lamar until fully paid and satisfied; that the assignment of said bond and mortgage to said G. B. Lamar could not, under the terms and true intent and meaning of said agreement, have the effect of impairing their validity or destroying their lien; that the said Caroline A. Lamar, as administratrix as aforesaid, has frequently recognized and admitted the existence and binding obligation of said bond and mortgage since the assignment of the same to said G. B. Lamar, and has estopped herself to claim or assent that upon his acquisition of the same by said assignment they become void in his hands, as

84 hereinafter more particularly shown. And these defendants

show that upon the payment of the principal and interest due upon said bond and mortgage the said agreement will secure the said mortgaged premises absolutely to the said Caroline A. Lamar and her children against any further claims or demands of the said Gazaway B. Lamar.

And these defendants, further answering, say that they admit that during or about the month of April, 1874, the said Gazaway B. Lamar recovered from the Government of the United States a large amount of money for cotton seized and disposed of by said Government; but these defendants deny that the said Gazaway B. Lamar at any time promised or agreed or bound himself by any contract with the said Caroline A. Lamar, administratrix as aforesaid, to take up or discharge said bond and mortgage out of the sum so recovered.

And these defendants deny that upon an accounting after said recovery there would have been due the estate of C. A. L. Lamar upwards of two hundred thousand dollars, and insist that in addition to said bond and mortgage there would have been due to the said Gazaway B. Lamar upon an accounting upwards of one hundred thousand dollars.

And these defendants say that the said complainants in their answer to said original bill alleged that the said Gazaway B. Lamar, before said bond and mortgage was assigned to him, promised and agreed with said Caroline A. Lamar, administratrix, that when he should recover from the United States Government sufficient
85 of the moneys to which the estate of said C. A. L. Lamar was entitled he would take up the said bond and mortgage with said moneys if he had not sufficient funds of his own. The defendants say that the said Gazaway B. Lamar did, at the date of the assignment of said bond and mortgage to him, have sufficient funds of his own to pay the amount due thereon, and that on the seventh day of May, 1874, he paid out of his own moneys to the National Bank of the Republic, of New York, the sum of sixty-four thousand and nineteen $\frac{88}{100}$ dollars, which sum was equal to the amount then due on said bond and mortgage, caused them to be duly assigned to him, and became the *bona fide* and lawful holder thereof for value; and defendants say that the said G. B. Lamar only carried out his purpose as declared to the said Caroline A. Lamar, administratrix; for in a letter written by her to him, dated July sixteenth, 1874, she quotes his letter to her written in May, 1874, in which he says: "I will take a transfer of that mortgage and hold it as my own until all the cotton suits and lawsuits are settled." The said defendants in their answer quote said letter, but omit the words "as my own."

And these defendants further say that the said Gazaway B. Lamar not only gave due notice to the said Carolina A. Lamar, administratrix, that he would hold said mortgage as his own, but that he would so hold it until the accounts between himself and the estate of said C. A. L. Lamar were settled, as the said defendants in
86 their said answer fully admit and also in their said cross-bill (p. 7).

And these defendants, further answering, deny that after the death of the said Gazaway B. Lamar, his executor, the said De Rosset Lamar recognized that the said bond and mortgage were held by him as a trust, and that nothing was to be done with either until an accounting could be had.

And these defendants say that the said executor, in pursuance of his duty as such, did in fact during his lifetime institute his suit to foreclose and collect the said bond and mortgage in the superior court of the county of Chatham, in the State of Georgia.

And these defendants, further answering, say that the said complainants in said cross-bill, the said Caroline A. Lamar and her children, have fully recognized the validity and binding force of the said bond and mortgage executed by her as administratrix as aforesaid, in pursuance of the decree of the superior court of Chatham county, and have estopped themselves to deny the efficacy of the same. In a letter written to the said G. B. Lamar on April tweentieth, 1870, the said Caroline A. Lamar, administratrix as aforesaid, states that she sent three thousand dollars to the said Bank of the Republic on the twelfth inst. In a letter dated September twenty-sixth, 1870, to said G. B. Lamar, she say-: "I feel so miserably depressed and oppressed about paying off the mortgage that, increaseingly valuable as the property must become, I feel sometimes
87 as if it would be best to sell and relieve myself of the horrid burden. Can you not interest some of your capitalist acquaintances in the matter and persuade them either to buy or lease?" On October seventh, 1870, in a letter to said G. B. Lamar she says: "I should not wonder if the mortgage should have to be foreclosed or some of the property have to be sold."

In a letter to said G. B. Lamar dated July sixteenth, 1874, after said bond and mortgage had been assigned to him and he had notified her of such transfer, she says: "A feeling of sadness comes over me when this handsome rental come-in that my children derive no benefit therefrom except in honestly paying what their father owed; but honor is as dear to me as life, and I would scorn any lack of principle in myself or in them." On May twenty-third, 1881, after the death of the said G. B. Lamar, the said Caroline A. Lamar, as administratrix as aforesaid, wrote to the said De Rossett Lamar, executor of said G. B. Lamar, as follows: "I recently sold a portion of the land owned by the estate of my husband in the eastern portion of this city, and on my having the titles made out found to my surprise that there was a mortgage on it, I believing that only the presses and warehouse were thus mortgaged. It is the mortgage assumed by me for my husband's and your father's joint and equal indebtedness to the Bank of the Republic for moneys borrowed on account of a guano speculation. As the presses and ware-
88 house are said to be worth over one hundred thousand dollars, and the mortgage was, when taken up, about sixty-four thousand dollars, it is amply secured by the presses and warehouse; and I wish to ask if you will not, as executor, relinquish the lands from the mortgage. We desire very much to realize something from this property, and as we do not think it will affect the interests of

the estate you represent, and the prices obtained is to our interests to accept, we hope you can and will do what I ask."

And these defendants say that in accordance with this request, and fully relying upon the good faith of the applicants and the recognition of said mortgage by them as a valid and subsisting lien, and being answered that the purchasers of said land so sold would build upon and improve the same and thus enhance the value of the remaining premises covered by the lien of said mortgage, the said De Rosset Lamar, as executor as aforesaid, consented to release and did, in fact, release the said land from the lien of said mortgage.

And these defendants say that by means of said release the sale of said land was effected by the said Caroline A. Lamar as administratrix as aforesaid, and that the proceeds of sale, amounting to eighteen thousand seven hundred and seventy dollars, as stated in said original bill, went into the lands of said administratrix as the property of herself and her children, complainants herein; and

89 these defendants say that under the facts and circumstances aforesaid the said complainants are estopped to deny the validity and binding obligation of said bond and mortgage either originally or in the hands of said G. B. Lamar or his said executor.

And these defendants, further answering, say that the bond and mortgage executed by the said Caroline A. Lamar as administratrix as aforesaid on March seventeenth, 1868, were given by her in compromise of a previous mortgage then foreclosed and proceeding against her said estate, and that, as such administratrix, she had the right to effect such compromise and bind the distributees of said estate thereby, especially under the sanction and decree of a court of equity.

And these defendants, further answering, say that the said Caroline A. Lamar and all her said children claim and insist, both in their answer and cross-bill, upon certain rights and privileges as accruing to them by the force and effect of said agreement made between the said Bank of the Republic, said G. B. Lamar, and said Caroline A. Lamar, as administratrix, on February twenty-first, 1868.

And these defendants say that the said bond and mortgage were expressly provided for by said agreement and were a part thereof, and that said complainants cannot claim the benefits and advantages of said agreement so made by said administratrix and at the same time repudiate said bond and mortgage and her authority to execute the same.

90 And these defendants insist that if the said bond and mortgage can be for any reason adjudged invalid and not binding upon said complainants that then the credit for eighty thousand dollars, entered by the said Gazaway B. Lamar upon his account against the said Charles A. L. Lamar as a part of said agreement and in consideration of the execution of a new and valid bond and mortgage, was without effect and not binding upon the said G. B. Lamar or his estate, and that these defendants claim the right to recover from the estate of said C. A. L. Lamar and said complain-

ants the said sum of eighty thousand dollars, with interest thereon from the date of said credit.

And these defendants, further answering, say that upon the death of the said W. W. Cheever and the said Charles A. L. Lamar the said G. B. Lamar, as surviving copartner, had a right to control the partnership property and effects and to adjust and settle the several partnership accounts and to apply to the extinguishment and satisfaction of the older items in said accounts moneys collected or received on account of the copartnership.

And these defendants, further answering, say that the said complainants allege that the proceeds of said cotton, in which the said C. A. L. Lamar is asserted to have had an interest, were collected and received by the said G. B. Lamar in April, 1874, and
91 that the proportion thereof due to the said C. A. L. Lamar then or soon thereafter became due and payable to him; and the defendants say that the pending suit for the foreclosure of said mortgage was brought on the twenty-first day of July, 1886, more than twelve years after the proceeds of said cotton became due and collectible; and these defendants say that the amount of said recovery due to the said C. A. L. Lamar (if any) cannot be set off against the amount due on said bond and mortgage, because as a set-off said amount is barred by the statute of limitations of the State of Georgia, not having been prosecuted within four years after the same became due and payable; and these defendants pray that they may have the same advantage and benefit of this defence as if the same had been set up by plea; and these defendants say that the said complainants cannot now avail themselves of any amount due the estate of said C. A. L. Lamar out of moneys collected from cotton by the said G. B. Lamar as a defence against said bond and mortgage except by and through a full and complete accounting with the estate of said G. B. Lamar as surviving copartner as aforesaid, whereby all the outstanding and unsettled accounts of said copartnership may be fully and finally adjusted.

And these defendants, further answering, say that the several suits referred to by the said G. B. Lamar in his letter of
92 May eight, 1874, to the said Caroline A. Lamar, as stated by complainants in their said cross-bill (p. 7), have all been settled or disposed of since the death of the said G. B. Lamar; that the said G. B. Lamar recovered certain sums of money in the Court of Claims of the United States for cotton seized, of which he rendered a statement to the said Caroline A. Lamar, administratrix as aforesaid; that the suits brought against Albert G. Brown, Treasury agent, in the United States circuit court of Massachusetts and against Hugh McCullough, Secretary of the Treasury of the United States, in the circuit court of the United States for the southern district of New York finally, in 1885, failed after appeal to the Supreme Court of the United States and yielded no valuable results; that no court was or is open in which suit could be carried on for the proceeds of the cotton belonging to the Importing and Exporting Company, in which said company the said C. A. L. Lamar was a shareholder, and that no reason now exists why the said bond and

mortgage should not be paid and the accounts between the estates of said C. A. L. Lamar and G. B. Lamar be fairly and fully adjusted; and these defendants, to that end, are ready and willing to produce all the books and other papers containing the accounts of said several copartnership's transactions and tending to throw light upon the same, which said books and papers the said complain-
93 ants in their said cross-bill allege were all in the possession of the said Gazaway B. Lamar, and, in accordance with the demand of said complainants for an accounting, to have a full, fair, and complete accounting of all copartnership transaction- and of all dealings not yet *adjudged* between said estates.

And these defendants say that they are ready and anxious to carry out the directions of the last will of said Gazaway B. Lamar invoked by said complainants in their cross-bill (p. 7.); which said last will provides that when all the collections for the private cotton are made and the amounts placed to the credit of the several accounts and interest charged to each for the advances of the testator then a division must be made of the net balance to the private accounts of each, and the accounts of C. A. L. Lamar and W. W. Cheever be respectively charged with each one-third of the losses on the guano account, with interest thereon, and if any balance be due by W. W. Cheever's account the account of C. A. L. Lamar must be charged with one-half of that amount as a partner in that business, and to settle all accounts with C. A. L. Lamar's estate, including the loss on the joint guano account, and to pay or to receive the balance; all which matters and things these defendants (making the usual reservations) are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be dismissed with their reasonable costs and charges in this behalf most
94 wrongfully sustained.

FRANK CAZENOVE JONES.

GEO. A. MERCER,
HENRY R. JACKSON,
Sol'rs for Def'ts.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*
City and County of New York,

On this twentieth day of April, A. D. 1887, before me personally appeared Frank C. Jones, one of the complainants in this action, and made oath that he had read the foregoing answer to the cross-bill filed by the defendants herein by him subscribed and knew the contents thereof, and that the matters therein contained of the complainant's own knowledge are true, and so far as stated on information and belief he believes the same to be true.

FRANK CAZENOVE JONES.

Subscribed and sworn to before me this 20th day of April, 1887.

WM. R. MONTGOMERY,
[SEAL.] *Notary Public, New York County.*

Filed April 30th, 1887.

MARION ERWIN,
Dep. Clerk.

95 *Replication to Answer to Cross-Bill.*

In the United States Circuit Court for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE Jones, Administratrix and Administrator *de bonis non*, with the Will Annexed, of the Estate of Gazaway B. Lamar, Complainants,
vs.
CAROLINE A. LAMAR, ELIZA A. CUNNINGHAM, JANE C. Cunningham, Caro N. Du Bignon, Georgia B. Lamar, and Mary L. Lamar, Defendants.
} In Equity.

The replication of the said defendants to the answer of the said complainants to the said defendants' cross-bill.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold *un*sufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said cross-bill against said complainants to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is un-
96 certain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said cross-bill they have already prayed.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Solicitors for Defendants.

Filed June 6th, 1887.

S. F. B. GILLESPIE,
Deputy Clerk.

Amended Answer to Original Bill.

In the Circuit Court of the United States, So. Dist. of Ga., Eastern Division.

HARRIET C. JONES *et al.*, Adm'x & Adm., Complainants,
and
CAROLINE A. LAMAR *et al.*, Defendants.

And now comes the said defendants and, the leave of the court first being had and obtained, amend their answer to the bill
97 of said complainant-, and say that the bond and mortgage on which said complainants bring this suit was a contract made and entered into by Caroline A. Lamar, as administratrix of the estate of Charles A. L. Lamar, said bond and mortgage bearing date the 17 day of March, 1868; that said bond and mortgage was a debt due by said administratrix, and that suit not having been brought against said adm'x within ten years after the same became due and payable on said bond and mortgage, the same is now barred by the statute of limitation of the State of Georgia. Wherefore said defendants pray that said bill be dismissed.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
FLEMING G. DU BIGNON,
Solicitors for Defendants.

Filed in office this 25th day of January, 1888.
MARION ERWIN, *Dep. Clerk.*

98 *Decree Dismissing Bill as to Certain Defendants.*

In United States Circuit, Eastern Div., Southern District, Georgia.

FRANK CAZENOVE JONES and HARRIET CAZENOVE JONES, Complainants,
and
CAROLINE A. LAMAR *et al.*, Defendants.
} In Equity.

The complainants in the above-stated cause having announced that they have closed their testimony, and the defendants and each of them having demurred to all the testimony introduced by the complainants, and having moved that the complainants' bill be dismissed as to each and all of the defendants on the ground that said complainants had not made out any case which entitled them to a decree against the defendants or either of them, the court thereupon took time to consider; and now, the court being fully advised in the premises, it is adjudged and decreed that said motion be, and it is hereby, sustained as to all the defendants except Mrs. Caroline A. Lamar, and the complainants' bill is hereby dismissed as to the defendants Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary S. Lamar.

And it appearing to the court that matters of account are involved in the issue made by the complainants' bill against Caroline
99 A. Lamar and by the cross-bill filed in the cause by the defendants against the complainants Frank Cazenove Jones and Harriet Cazenove Jones, as administratrix and administrator *d. b. n. c. t. a.* of the estate of Gazaway B. Lamar, deceased—

It is further adjudged and decreed that all of said issues be reffer-ed to Alexander Proudfit, Esq., as master in chancery, to take testimony thereon and to make report on all issues therein, whether in fact or law, to the next term of the court; that the master's report shall be filed twenty days before the next term of this court, and that either party dissatisfied therewith shall file exceptions thereto within twenty days after such report is filed.

In open court, April 20th, 1888.

EMORY SPEER, *Judge.*

Filed April 20, 1888.

S. F. B. GILLESPIE,
Dep. Clerk.

100 *Petition for Appeal and Order.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET C. JONES & FRANK C. JONES, Administrators, with the Will Annexed, of the Estate of Gazaway B. Lamamar, Complainants, and CAROLINE A. LAMAR *et al.*, Defendants.	In Equity.

To the honorable the circuit court of the United States for the eastern division of the southern district of Georgia and to the Hon. Emory Speer, judge, presiding:

The petition of Harriet C. Jones and of Frank C. Jones, administrators, complainants in the above case, respectfully show that they desire to enter an appeal to the Supreme Court of the United States from the decree rendered against them and in favor of Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, defendants to said bill, during the present the April term, 1888, of said court, by which said decree said bill of said complainants was dismissed as to said named
101 defendants and is a final decree as to them.

Petitioners show that the amount claimed in said bill to be due by said defendants and by each of them and involved in said equity suit against said defendants exceeds and amounts in value to more than five thousand dollars, exclusive of interest and costs.

Petitioners tender herewith a bond, with good security, to answer all costs if they fail to make their plea good.

And petitioners pray that their appeal from said decree be duly allowed.

GEORGE A. MERCER,
H. R. JACKSON,
Solicitors for Petitioners.

Order.

The foregoing petition for the allowance of an appeal from the decree rendered in said case during the present term being tendered in open court during said term, accompanied with a sufficient bond for the costs to be due in this court, and the solicitors for said defendants being notified—

It is ordered that the appeal of said complainants from the decree rendered April sixteenth, A. D. 1888, dismissing said bill as to the defendants Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar be, and
102 the same is hereby, allowed in open court as prayed for.

It is further ordered that the bonds for costs in this court tendered by said petitioners be, and is hereby, approved.

It is further ordered that said petitioners do pay to the clerk of this court the costs that have accrued up to the allowance of said appeal, and do pay and tender to said clerk security for the same, satisfactory to him, the costs of preparing and transmitting the record of said case up to said appeal to the Supreme Court of the United States.

It is further ordered that the clerk of this court do prepare and transmit without delay to the October term, 1888, of the Supreme Court of the United States, duly certified according to law, a full and complete transcript of all the proceedings in said case, including the pleadings, evidence, said decree, and the petition for the allowance of an appeal, and this order.

It is further ordered that the foregoing petition for the allowance of an appeal and this order be entered on the minutes of the court.

In open court, May 3rd, 1888.

EMORY SPEER, *Judge.*

Filed May 3rd, 1888.

M. ERWIN, *Dep. Clerk.*

103 *Bond for Costs on Appeal.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET C. JONES and FRANK C. JONES, Adm'ors, Compl'ts, and CAROLINE A. LAMAR *et al.*, Defend'ts. } In Equity.

Know all men by these presents that we, Harriet Cazenove Jones and Frank Cazenove Jones, administrators of the estate of Gazaway B. Lamar, as principals, and Joseph D. Weed, of Savannah, as surety,

are held and firmly bound unto Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, defendants, in the full and just sum of five hundred dollars, to be paid to said defendants, their executors, administrators, or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal- and dated this — day of May, A. D. 1888.

Whereas on the sixteenth day of April last past, in said suit pending in said court, a decree was rendered against said complainants and dismissing said bill as to the obligees in this bond and a peti-
104 tion was presented to the court by said complainants asking the allowance of an appeal from said decree to the Supreme Court of the United States to the October term next of said Court:

Now, the condition of the above obligation is such that if the said appellants, Harriet C. Jones and Frank C. Jones, administrators, shall prosecute their said appeal to effect and answer all costs if they fail to make their plea good, then the obligation to be void; else to remain in full force and virtue.

HARRIET C. JONES,
FRANK C. JONES,
Administrators,
By GEO. A. MERCER,
Their Solicitor.
JOSEPH D. WEED.

Sealed and delivered in presence of—

L. W. LANDERSHIRE,
Notary Public, C. Co., Ga.

Filed May 3rd, 1888.

MARION ERWIN, *Dep. Clerk.*

105 *Evidence Offered by Complainants.*

Letters of administration of H. C. & F. C. Jones.

"Exemplification thereof."

The People of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, Greeting:

Know ye that we, have examined the records and files in the office of the surrogate of the county of New York, do find *a* certain letters of administration, with the will annexed, granted to Harriet Cazenove Jones and Frank Cazenove Jones upon the estate of Gazaway B. Lamar, deceased, there remaining in the words and figures following, to wit:

The People of the State of New York to Harriet Cazenove Jones, of the city of New York, a residuary legatee under the last will and testament of Gazaway B. Lamar, deceased, and to Frank Cazenove Jones, of said city, send greeting:

Whereas said Gazaway B. Lamar lately departed this life, having previously duly made and executed his last will and testament; and whereas said will was, on the tenth day of November, in the year one thousand eight hundred and 74 (seventy-four), duly admitted to probate by Delano C. Calvin, Esquire, surrogate of the county of New York; and whereas the executors named in
106 said will have since either departed this life or renounced the right to act in such trust; and whereas said testator was, at or immediately previous to his death, a resident of the county of New York, by means whereof the proving and registering of said will and the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said testator died possessed in the State of New York, and also the auditing, allowing, and final discharging the account thereof, doth appertain unto us; and we, being desirous that said will should be observed and performed, and that the goods, chattels, and credits of said testator should be well and faithfully administered, applied, and disposed of, do grant unto you, the said Harriet Cavenove Jones and Frank Cazenove Jones, full power and authority by these presents to administer and faithfully to dispose of all and singular the said goods, chattels, and credits, and to ask, demand, recover, and receive the debts which unto the said testator whilst living and at the time of his death did belong, and to pay the debts which the said testator did owe as far as such goods, chattels, and credits will thereto extend and the law require, hereby requiring you to observe and perform the said last will and testament and to observe and perform all the duties to which you would have been subject if you had been named executors thereof; and we do — these presents depute, consti-
107 tute, and appoint you, the said Harriet Cazenove Jones and Frank Cazenove Jones, administrators, with the will annexed, of all and singular the goods, chattels, and credits which were of said Gazaway B. Lamar, deceased.

In testimony whereof we have caused the seal of office of the surrogate court of the county of New York to be hereunto affixed.
[L. S.]

Witness Daniel G. Rollins, surrogate of said county, at the city of New York, this 4th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

AUSBURN M. DICKINSON,
Clerk to the Surrogate's Court.

All which we have caused by these presents to be exemplified and the seal of our said surrogate's court to be hereunto affixed.

Witness Daniel G. Rollins, surrogate, at the city of New York, the thirteenth day of March, in the year of our Lord one thousand

eight hundred and eighty-six, of our Independence the one hundred and tenth.

[SEAL.] AUSBURN M. DICKINSON,
Clerk of the Surrogate's Court.

I, Daniel G. Rollins, surrogate of said county and presiding magistrate of the surrogate's court, do hereby certify that Ausburn M. Dickinson, whose name is subscribed to the preceding exemplification, is the clerk of the said surrogate's court of the county of
108 New York, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said surrogate's court, and that the attestation thereof is in due form.

Dated New York, March 13th, 1886.

DAN. G. ROLLINS, *Surrogate.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Ausburn M. Dickinson, clerk of the surrogate's court of the county of New York, do hereby certify that Daniel G. Rollins, whose name is subscribed to the preceding certificate, is the presiding magistrate of the surrogate's court of the county of New York, duly elected, sworn, and qualified, and that the signature of said magistrate to said certificate is genuine.

Seal of Surrogate Court.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 13th day of March, 1886.

AUSBURN M. DICKINSON,
Clerk of the Surrogate's Court.

Filed in the clerk's office U. S. circuit court, so. dist. of Ga., Jan'y 25th, 1888.

M. ERWIN,
Dep'y Clerk.

109 *Bond of Caroline A. Lamar, Adm'tx, to Bank of the Republic.*

Know all men by these presents that I, Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, of the city of Savannah, county of Chatham and State of Georgia, *and* held and firmly bound unto the National Bank of the Republic, a body corporate located in the city and State of New York, in the sum of one hundred and sixty dollars; for the payment of which I bind myself as administratrix as aforesaid and my successors in the said administration firmly by these presents. Sealed with my seal and dated the seventeenth day of March, eighteen hundred and sixty-eight, in pursuance of a decree of the superior court of the county of Chatham aforesaid, rendered on the six day of March, eighteen hundred and sixty-eight, in a cause then pending on the equity side of said court, wherein the said National Bank of the Republic and Gazaway B. Lamar were complainants and the said Caroline A. Lamar, admin-

istratrix as aforesaid, was defendant. The condition of the above obligation is such that if the said Caroline A. Lamar, administratrix as aforesaid, or her successors in the administration, shall well and truly pay or cause to be payed to the said The National Bank of the Republic or its assigns the sum of eighty thousand dollars, with interest thereon from the twenty-first day of February,
110 eighteen hundred and sixty-nine; and the further sum — eight thousand dollars, with interest on seventy-two thousand dollars from the day appointed for the payment above mentioned, on the twenty-first day of February, eighteen hundred and seventy; and the further sum of eight thousand dollars, with interest on sixty-four thousand from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-one; and the further sum of eight thousand dollars, with interest on fifty-six thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-two; and the further sum of eight thousand dollars, with interest on forty-eight thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-three; and the further sum of eight thousand dollars, with interest on forty thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-four; and the further sum of eight thousand dollars, with interest on thirty-two thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-five; and the further sum of eight thousand dollars, with interest on twenty-four thousand dollars from the day appointed for the payment last above
111 mentioned, on the twenty-first day of February, eighteen hundred and seventy-six; and the further sum of eight thousand dollars, with interest on sixteen thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-seven; and the further sum of eight thousand dollars and interest thereon from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-eight, then the above obligation to be void; but if default shall be made in any or either of the payments above specified or any part thereof, then the bond shall be void and remain in full force and virtue; provided, nevertheless, that the said Caroline A. Lamar, administratrix as aforesaid, and her successors in the said administration have the right to pay to the said National Bank of the Republic or its assigns the whole or any part of the said sum of eighty thousand dollars, with the interest thereon as aforesaid, before the times hereinbefore appointed for the payment of the same.

CAROLINE A. LAMAR, [L. S.]
Adm'x Est. C. A. L. Lamar.

In the presence, at Savannah, in the State of Georgia aforesaid—
THOS. E. LLOYD,
Not. Pub., C. C.

I do hereby certify that the bond is secured by mortgage, duly stamped.

THOS. E. LLOYD,
Not. Pub., C. C.

Recorded March 18th, 1868.

112 *Mortgage—Caroline A. Lamar, Adm'tr'x, to Bank of the Republic.*

This indenture, made this seventeenth day of March, eighteen hundred and sixty-eight, between Caroline A. Lamar, of Savannah, county of Chatham and State of Georgia, administratrix of the estate of Charles A. L. Lamar, of the first part, and the National Bank of the Republic, a body corporate of the city and State of New York, of the second part:

Whereas by a decree of the superior court of the county of Chatham aforesaid rendered on the six day of March, eighteen hundred and sixty-eight, in a cause then pending on the equity side of the said court, in which the said party of the second part and Gazaway B. Lamar were complainants and the said party of the first part, as administratrix as aforesaid, was defendant, the said party of the first part, administratrix as aforesaid, was authorized to make and deliver to the said party of the second part, for the considerations set forth in said decree, her bond for the penal sum of one hundred and sixty thousand dollars, conditioned to be void upon the payment of the sum of eighty thousand dollars, with interest thereon in the manner set forth in said decree, and also, for the purpose of securing the payment of the monies mentioned in the condition of said bond, a mortgage of all those lots and wharves in the said city of Savannah bounded on the north by the Savannah river, on the east by the lot and wharves of the hydraulic cotton press, on the south by a street, and on the west by Willink's lot and the lots lying south of the same and having the eastern boundary, and all

113 those lands lying east and south of the same, containing seventy-five acres, more or less, except a certain flour mill and the lots on which it is erected, all of which said property was conveyed by the said Gazaway B. Lamar to the said Charles A. L. Lamar by deed dated the thirty-first day of December, eighteen hundred and sixty-three, subject to the provisions of a contract made the eighteenth day of December, eighteen hundred and sixty-two, between the said Gazaway B. Lamar and the Altantic and Gulf railroad, such mortgage containing the provisions that no proceedings to foreclose the same for default in any of the payments specified in the said bond shall be commenced within six months after such default, and that in case of any such default it may be foreclosed for the whole of the principal sum above mentioned then unpaid, notwithstanding that some of the specified payments may not yet be due by the terms of the said bond, with interest thereon, and containing also a waiver by the said Caroline A. Lamar of any and all right or claim of dower she may have in the said property or any part thereof as against such mortgage;

And whereas the said party of the first part, as administratrix as

aforesaid, in pursuance of the said decree has made and delivered to the said party of the second part her bond of even date with these presents for the penal sum of one hundred and sixty thousand dollars, conditioned to be void upon the payment by the said
114 party of the first part, administratrix as aforesaid, or her successors in the said administration to the said party of the second part or its assigns of the sum of eighty thousand dollars, with interest thereon from the twenty-first day of February, eighteen hundred and sixty-nine, in the manner following—that is to say, the sum of eight thousand dollars, with interest on eighty thousand dollars from the day aforesaid, on the twenty-first day of February, eighteen hundred and sixty-nine; and the further sum of eight thousand dollars, with interest on seventy-two thousand dollars from the day appointed for the payment above mentioned, on the twenty-first day of February, eighteen hundred and seventy; and the further payment of eight thousand dollars, with interest on sixty-four thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-one; and the further sum of eight thousand dollars, with interest on fifty-six thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-two; and the further sum of eight thousand dollars, with interest on forty-eight thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-three; and the further sum of eight thousand dollars, with interest on forty thousand dollars
115 from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-four; and the further sum of eight thousand dollars, with interest on thirty-two thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-five; and the further sum of eight thousand dollars, with interest on twenty-four thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-six; and the further sum of eight thousand dollars, with interest on sixteen thousand dollars from the day appointed for the payment last above mentioned, on the twenty-first day of February, eighteen hundred and seventy-seven; and the further sum of eight thousand dollars, with interest thereon from the day appointed for the last payment above mentioned, on the twenty-first day of February, eighteen hundred and seventy-eight:

Now, this indenture witnesseth that the said party of the first part, administratrix as aforesaid, by virtue of the power given her by the said decree and for the consideration aforesaid and in order to secure to the said party of the second part the faithful performances of the condition of her said bond, hath granted, bargained, and sold,
116 and by these presents doth grant, bargain, and sell, unto the said party of the second part all the said property above mentioned and described, except as aforesaid, and every part thereof,

together with all the rights, members, and appurtenances to the same belonging, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, at law and in equity, of her, the said party of the first part, administratrix as aforesaid, and of the heirs-at-law of the said intestate of, in, and to the same and every part thereof; to have and to hold the same and every part thereof, with the appurtenances, unto the said party of the second part and its assigns, to its and their only use forever, upon condition, nevertheless, that if the said party of the first part, administratrix as aforesaid, and her successors in the said administration shall well and truly pay or cause to be payed to the said party of the second part and its assigns the said sum of eighty thousand dollars, with the interest thereon in the said bond mentioned, in the payments and at the times specified in the said bond, if not previously paid, as provided for in the said bond, then this indenture and the estate hereby granted and every clause and article herein contained, as well as the said bond, shall cease, determine, and be void; but if default shall be made
117 in either of the said payments mentioned in the said bond or any part thereof so that the same or any part thereof shall remain unpaid for six months after the time appointed in said bond for the payment of the same, then it shall and may be lawful for the said party of the second part and its successors to enter upon and sell the same mortgaged property according to the laws of the said State of Georgia in such cases made and provided, and out of the proceeds of such sale to retain not only the amount then due according to the items of the said bonds and in which default shall be made as aforesaid, but also the whole of the said principal sum of eighty thousand dollars then unpaid, with interest thereon to the time of such sale, notwithstanding the times appointed in the said bond for the payment of the same shall not yet have arrived, the same being considered as due upon the occurrence of such default for the purpose of such foreclosure and collection, together with the costs and expenses of foreclosure and sale, including the usual and customary fees and commissions of attorneys for foreclosures and collection, rendering the residue, if any, to the said party of the second part, administratrix as aforesaid, or her successors in the said administration; and the said Caroline A. Lamar hereby waives, in favor of the said
118 party of the second part and its assigns, any and all right or claim of dower she may have in and to the said mortgaged property and every part thereof.

In testimony whereof the said party of the first part hath hereunto set her hand and seal the day and year first above written.

CAROLINE A. LAMAR, [L. S.]
Adm'x Est. C. A. L. Lamar.

Signed, sealed, and delivered in presence of—at Savannah, in the State of Georgia aforesaid—

M. P. LAMAR.
THOS. E. LLOYD, *Not. Pub., C. C.*

[U. S. internal revenue stamp, $8,000.]

Recorded March 18th, 1868.

Assignment to G. B. Lamar.

Know all men by these presents that the National Bank of the Republic, a body corporate of the city and State of New York, a party of the first part, in consideration of the sum of sixty-four thousand and nineteen dollars and eighty-eight cents, lawful money of the United States, to said bank in hand paid by Gazaway B. Lamar, of the State of Georgia, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part a certain indenture
119 of mortgage bearing date the seventeenth day of March, in the year one thousand eight hundred and sixty-eight, made by Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, to secure the payment of eighty thousand dollars and interest, together with the bond or obligation therein described and the money due and to grow due thereon, with the interest; to have and to hold the same unto the said party of the second part, his legal representatives and assigns forever, subject only to the provisions — the said indenture of mortgage mentioned, and said *bond* doth hereby make, constitute, and appoint the said party of the second part its true and lawful attorney, irrevocable, in its name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and *and* interest, and in case of payment to discharge the same as fully as said bank might or could do if these presents were not made.

The said mortgage was recorded in the office of the clerk of the superior court, Chatham county, State of Georgia, in County Record Book 4 A, folios 142, 143, 144, the 18th March, 1868, and the said bond or obligation was also recorded in said office in County Records Book 4 A, folios 141, 142, 18th March, 1868.

In witness whereof said party of the first part has caused its
120 corporate seal to be herewith affixed and these presents to be signed by its president and attested by its cashier under authority of its board of directors the seventh day of May, one thousand eight hundred and seventy-four.

R. H. LOWRY, *President.* [CORP'N SEAL.]

In presence of—
Attest: H. W. FORD, *Cash'r.*
EDWIN F. COREY, JUN.

STATE OF NEW YORK, }
City and County of New York. }

Be it known that on this 18th day of May, A. D. 1874, before me, Edwin F. Corey, Jr., a commissioner for the State of Georgia, duly commissioned and qualified and resident in said city and county, personally appeared R. H. Lowry, to me personally known to be the

president of the National Bank of the Republic of New York, the granter named in and who executed the above instrument by its said president, who acknowledged that he executed the above instrument by authority of a resolution of the board of directors of said bank and for the uses and purposes therein named and mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

EDWIN F. COREY, JR.,
[SEAL.] *Commissioner for the State of Georgia in New York.*

Recorded June 16th, 1875.

121 *Transcript of Record from Chatham Superior Court in Case Nat'l B'k of Republic vs. Caroline A. Lamar.*

STATE OF GEORGIA, }
Chatham County. }

To the honorable the judge of the superior court of Chatham county, having jurisdiction in equity:

Humbly complaining, shew unto your honor your orators, The National Bank of the Republic, a corporation existing under the laws of the State of New York and of the United States, and Gazaway B. Lamar, of the county of Chatham and State of Georgia, that your orator Gazaway B. Lamar, being indebted to your orator The National Bank of the Republic (then known as "The Bank of the Republic") in a large sum of money, did, on the fourteenth day of January, in the year eighteen hundred and sixty-one, execute his certain bond, payable to Gazaway B. Lamar, president of the said The Bank of the Republic, his successors and assigns, in the sum of one hundred and sixty-four thousand dollars, conditioned for the payment of eighty-two thousand dollars on demand, and to secure the payment of the sum of money for which said bond was made and delivered your orator Gazaway B. Lamar also executed a certain deed of mortgage to the said Gazaway B. Lamar, as such president of the Bank of the Republic, his successors and assigns, on the said fourteenth day of January,
122 eighteen hundred and sixty-one, whereby the said Gazaway B. Lamar did mortgage "all the wharves and lots of land situate, lying, and being in the city of Savannah and State of Georgia, known as Lamar's wharves and press and warehouse, together with all houses, tenements, presses, engines, boilers, machinery, and appurtenances thereunto belonging, the said wharves — on the north by Savannah river, on the east by the wharf of the hydraulic press, on the south by a street separating it from the warehouse, and on the west by the railroad, formerly Willink's wharf; and the warehouse bounded on the north by the street referred to, on the east by a lot of the hydraulic press, on the west by a street, and on the south by a street;" that the said deed of mortgage was duly delivered to the said The Bank of the Republic, and was afterwards recorded on the seventeenth of February, in

the year eighteen hundred and sixty-five, in the clerk's office of the superior court of Chatham county in Book W W W, folios 432, 433, 434, and 435, as will — made at large appear, reference being had to a copy of said deed of mortgage, hereto annexed and marked "Exhibit A," to which your orators pray leave to refer as often as may be necessary as part of this their bill of complaint.

Your orators further shew unto your honor that on the twentieth day of January, in the year eighteen hundred and sixty-six,
123 your orator The National Bank of the Republic, in the name of its then president, R. H. Lowry, commenced proceedings for the foreclosure of said mortgage in the superior court of Chatham county, in the State of Georgia, and on the same day obtained from said court a "rule *nisi*" (which was duly served on the said Gazaway B. Lamar, your orator), and in due course of judicial proceedings on the seventeenth day of May, in the year eighteen hundred and sixty-six, a "rule absolute" was made and granted by said court whereby it was ordered (amongst other things) that the said R. H. Lowry, president of the National Bank of the Republic, have judgment against the said Gazaway B. Lamar for the sum of eighty-two thousand dollars, with interest thereon from the fourteenth day of January, eighteen hundred and sixty-one, being the amount due on said mortgage; and, further, that the mortgaged property be sold, as is prescribed in cases of execution, and that afterwards an execution of "*fieri facias*," based on said "rule absolute," was issued, and on the third day of Jan'y, in the year eighteen hundred and sixty-seven, said writ of "*fieri facias*" — on foreclosure of mortgaged property as hereinbefore set forth and described by Benjamin L. Cole, sheriff of Chatham county; and your orators further shew unto your honor that after the levy of said execution, to wit, on
124 the tenth day of January, eighteen hundred and sixty-eight, Mrs. Caroline A. Lamar, of the county of Chatham and State of Georgia, interposed a "claim" to said property so levied on in the manner provided for by the laws of the State of Georgia, making oath that the property levied on was not the property of the said Gazaway B. Lamar, defendant, in execution, but was the property of the deponent (the said Caroline A. Lamar), as administratrix of Charles A. L. Lamar, deceased, and giving the necessary bond to present an issue for trial in the superior court of Chatham county; your orator- further shew unto your honor that when your orator Gazaway B. Lamar executed and delivered mortgage deed that he was legally seized and possessed of the property and estate therein conveyed and mortgaged and had a perfect right to encumber or dispose of the same; and your orators aver that the lien of the National Bank of the Republic, required under and by virtue of said mortgage, has never been lost or disturbed, and that said bank still has the right to claim and receive the amount due under said bond and mortgage out of a sale of the mortgaged property; your orators further shew that they have been informed and believe that the said Caroline A. Lamar interposes her claim to said mortgaged property under a deed of bargain and sale from your

orator Gazaway B. Lamar to her intestate Charles A. L.
125 Lamar, deceased, dated the — day of ——, eighteen hundred and sixty-three, and before said mortgage was recorded in the clerk's office of the superior court of Chatham county, whereas your orators aver that before and at the time said conveyance was made to the said Charles A. L. Lamar he, the said Charles, had distinct notice of the existence of said mortgage—had accepted said conveyance with such incumbrance on the property; and your orators further shew that in a spirit of fairness and conciliation they have proposed to the said Caroline A. Lamar, administratrix of C. A. L. Lamar, deceased, to discharge said estate and the mortgaged property from any further claim of your orator The National Bank of the Republic on the payment by said administratrix of the sum of eighty thousand dollars or when the payment of said sum of eighty thousand dollars should be secured by bond and mortgage on the real estate and improvements hereinbefore described, together with all the lands formerly owned by Gazaway B. Lamar and by him conveyed to Charles A. L. Lamar by deed bearing date the 3rd of December, 1863, lying east and south of said lots, containing seventy-five acres, more or less, except the mill and the lots on which it is erected, in ten equal annual instalments, with
126 interest, payable annually; and your orator G. B. Lamar has offered and does now offer to said administratrix that when said sum of eighty thousand dollars is paid or secured to be paid out of said estate of C. A. L. Lamar, so that said sum of eighty thousand dollars can be credited on the bond of the said G. B. Lamar to the National Bank of the Republic, the estate of C. A. L. Lamar shall be credited with the said sum of eighty thousand dollars on account of any claims of the said G. B. Lamar against said estate of C. A. L. Lamar, which claims your orator G. B. Lamar avers to be much greater than the said sum of eighty thousand dollars; and, further, that the said mortgaged property hereinbefore described, together with the other lands to be also mortgaged, shall be thenceforth discharged and freed from the payment of any claims whatever, present or future, of the said G. B. Lamar, and also from any judgement that may hereafter be obtained by the said G. B. Lamar against said estate; and your orators had well hoped that the said Caroline A. Lamar, as such administratrix, would have complied with these reasonable requests and offers of your orators in the premises, but now so it is that the said Caroline A. Lamar has hitherto wholly
127 refused and declined to comply with these reasonable requests and offers, sometimes pretending that the lien of said mortgage had been lost by the failure to record the same before the date of the said conveyance by G. B. Lamar to C. A. L. Lamar without notice to the latter of the existence of said mortgage, and at other times pretending that although the proposition made by your orator to release the property of said estate of C. A. L. Lamar on the terms hereinbefore set forth is fair and beneficial to said estate, yet the said Caroline A. Lamar as such administratrix has no authority to accede to the same and to bind said estate by executing a bond and mortgage as administratrix in the manner proposed; whereas your

orator charges the truth to be that the said C. A. L. Lamar, defendant's intestate, had express notice of the existence of said deed of mortgage at the time of its execution and at divers other times before the date of the conveyance by the said G. B. Lamar to the said C. A. L. Lamar, and that the lien of said mortgage is still a good and subsisting lien in favor of your orator The National Bank of the Republic, and that the said Caroline A. Lamar, as such administratrix, has authority to compound said claim and to execute the bond and mortgage for that purpose; and your orators
128 are without redress except through the interposition and decree of this honorable court. To the end, therefore, that the said Caroline A. Lamar, administratrix as aforesaid, may full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and set forth as amply and fully as if the same were herein again repeated and she particularly interrogated thereto, and that the said mortgaged property may be decreed to be subject to the debt due to your orator The National Bank of the Republic; that the said Caroline A. Lamar, administratrix of Charles A. L. Lamar, may be authorized and empowered by the order and decree of this honorable court to execute a bond with a mortgage on the wharves and press and warehouse and appurtenances as hereinbefore described which shall bind said estate to your orator The National Bank of the Republic, and that your orator may have such further and other relief in the premises as the nature of the case may require and to your honor shall seem meet—

May it please your honor to grant unto your orator the writ of subpœna to be directed to the said Caroline A. Lamar, administratrix of Charles A. L. Lamar, deceased, requiring her to be
129 and appear before your honor in the honorable court on the equity side thereof on a day and under a penalty therein to be named, then and there to answer the premises and abide by the decree, order, and judgement of the court; and your orators will ever pray.

JACKSON, LAWTON & BASSINGER,
Complainants' Solicitors.

EXHIBIT A.

This indenture, made the fourteenth day of January, in the year one thousand eight hundred and sixty-one, between Gazaway B. Lamar, of the city and county of New York, party of the first part, and Gazaway B. Lamar, as president of the Bank of the Republic, a banking association in said city, party of the second part: Whereas the said Gazaway B. Lamar is justly indebted to the Bank of the Republic in the sum of eighty-two thousand dollars lawful money of the United States, secured, to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of one hundred and sixty-four thousand dollars lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of eighty-two thousand dollars to the said party of the second part, his
130 successors and assign-, on demand, at the banking-house of

said Bank of the Republic, in the city of New York, with lawful interest, as by the said bond or obligation and the condition thereof —, reference being thereunto had may more fully appear: Now, this indenture witnesseth that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part and to his successors in office and assigns forever all those wharves and lots of land situate, lying, and being in the city of Savannah, State of Georgia, known as Lamar's wharves and press and warehouse, together with all houses, tenements, presses, engines, boilers, machinery, and appurtenances thereunto belonging, the said wharves bounded on the north by Savannah river, on the east by the wharf of the hydraulic press, on the south by a street separating it from the warehouse, and on the west
131 by the railroad, formerly Willink's wharf, and the warehouse bounded on the north by the street referred to, on the east by a lot of the hydraulic press, on the west by a street, and on the south by a street, all subject to a mortgage to the Bank of Commerce for about thirty-two thousand dollars, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the revi-sion and revi-sions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his successors in office and assigns, to his and their own proper use, benefit, and behoof forever; provided always—and these presents are upon this express condition—that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his successors in office or assigns, the said sum of money mentioned in the said bond or obligation, and
132 the interest thereon, at the time and in the manner mentioned in the condition according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine, and be void. And the said Gazaway B. Lamar, for himself, his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, his successors or assigns, the said sum of money and interest as mentioned above and expressed with the condition of the said bond; and if default shall be made in the payment of the said share of money above mentioned or the interest that may grow due

thereon or of any part thereon, that then and from thenceforth it shall be lawful for the said party of the second part, his successors in office or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefits and equity of redemption of the said party of the first part, his heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with all costs and charges of advertisement and sale of the same premises, rendering
133 the overplus of the purchase-money (if any their shall be) unto the said party of the first part, heirs, executors, administrators, or assigns, which sale so to be made shall forever be a perpetual bar, both in law and in equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof by, from, or under him, them, or any of them.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

GAZAWAY B. LAMAR. [L. S.]

Sealed and delivered in the presence of—
JOHN BISSELL.
JAMES WILLIAMS.

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

I, John Bissell, a commissioner for the State and resident in the city of New York, legally appointed by the governor of the State of Georgia to take testimony, acknowledgements, &c., &c., to be used or recorded in that State, and qualified, do, under my hand and official seal, certify that on this 14th day of January, 1861, before me personally appeared Gazaway B. Lamar, to *be* known to be the same person described in and who executed the annexed in-
134 strument, and acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

JOHN BISSELL,
Commissioner for Georgia.

In Superior Court Chatham County, January Term, 1868.

THE NATIONAL BANK OF THE REPUBLIC *et al.*, Compl'ts, and CAROLINE A. LAMAR, Adm'x, &c., Defendant. } In Equity.

Bill for discovery & relief, service acknowledged, &c., and subpœna waived 10th December, 1867.

THOS. E. LLOYD,
Def't's Sol'r.

Recorded on proceedings superior court Book H H, folio 210, 211, 212, 213, 214, 215, 216.

JACKSON, LAWTON & BASSINGER,
Compl'ts' Sol'rs.

In Chatham Superior Court.

THE NATIONAL BANK OF THE REPUBLIC *et al.*, Compl't-,
vs.
CAROLINE A. LAMAR, Adm'x of Charles A. L. Lamar, Def't.
} In Equity.

The Answer of Caroline A. Lamar, Administratrix of Charles A. L. Lamar, to the Above Bill of Complaint.

135 This defendant, saving and reserving to herself all benefit of exception to the errors and insufficiencies of said bill, for answer thereunto saith that she believes it to be true, as in said bill stated, that the said Gazaway B. Lamar, being indebted to the National Bank of the Republic, did make the bond and mortgage in said bill particularly described, and that Exhibit "A," to said bill attached, is a true copy of said mortgage; and this defendant; further answering, saith that she admits it to be true that proceedings were in the superior court of Chatham county to foreclose said mortgage; that the same are correctly set forth in said bills; that a *fieri facias* upon the mortgage judgment was levied upon the lands in said mortgage specified, and that this defendant, as administratrix of Charles A. L. Lamar, did put in a claim to said property and give bond in the terms of the statute; and this defendant, further answering, saith that she admits it to be true that at the time of the execution of the mortgage the said Gazaway B. Lamar was legally — and possessed of the property therein described and had full power and authority to create such lien and to encumber and dispose of said property, but this defendant — that by the laws of — (as she is advised by counsel) all mortgages on real estate were
136 required to be recorded within three months from the date of the execution thereof, and that upon failure to record such mortgage the same is postponed to purchases made prior to the actual record of the mortgage; and this defendant avers that said mortgage was not recorded for several years after its execution, and that whilst said mortgage remained so unrecorded as aforesaid the said Gazaway B. Lamar, for and in consideration of the sum of one hundred thousand dollars, bargained, sold, and conveyed said mortgage- property to Charles A. L. Lamar, the intestate of this defendant, as will more fully appear by reference to said deed of conveyance, copy of which is hereto annexed, marked Exhibit "A," which this defendant prays may be taken as part of this her answer*ed*, with leave to refer thereto as occasion may require.

And this defendant, further answering, saith that she cannot say whether the said Charles A. L. Lamar had notice of the existence

of said mortgage at the time of his said purchase, and prays that the complainants may be held to proof thereof; and this defendant, further answering, admits the proposition for compromise on the part of the complainants as set forth in said bill; and that if the mortgage be a lien upon the estate of the said Charles A. L. Lamar that said proposition is fair and equitable and will be advan-
137 tageous to said estate; but this defendant is advised by counsel to believe and does believe that she has no power to execute such mortgage as is proposed except under the sanction and decree of this honorable court; and this defendant denies the said several pretences with which she stands charged in said bill, and prays to be hence dismissed with her costs and charges in this behalf wrongfully sustained.

THOS. E. LLOYD,
Sol'r for Def'ts.

You, Caroline A. Lamar, do swear that what is contained within your answer, so far as concerns your own act and deed, is true of your own knowledge, and what relates to the act or deed of any other person you believe to be true.

CAROLINE A. LAMAR, *Adm'x.*

Sworn to before me this 5th day of March, 1868.

J. R. SAUSSY,
Notary Public, Chat. Co.

EXHIBIT A.

This indenture, made the thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-three, between Gazaway B. Lamar, of the county of Chatham, State of Georgia, of the first part, and Charles A. L. Lamar, of the city of Savannah, Chatham county, State of Georgia, of the second
138 part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hundred thousand dollars, to him in hand paid by the said Charles A. L. Lamar at or before the sealing and delivery of the presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents doth grant, bargain, sell, remise, release, and confirm, to the said party of the second part and his heirs and assigns all those lots and wharves situate, lying, and being in the city of Savannah, bounded on the east by the lot and wharf of the hydraulic press, on the south by a street, on the west by Willink's lots, & on the north by the Savannah river, together with lots lying south of same, with same eastern boundary, together with all the lands hitherto owned by me lying east and south of same, containing seventy-five acres, be the same more or less, subject to the provisions of a contract made 18th of November, 1862, with the Atlantic & Gulf railroad, together with all and singular, the houses, out-houses, edifices, buildings, stables, yards, gardens, liberties, privileges, easements, commodities, emoluments,

hereditaments, rights, members, and appertenances whatsoever thereunto belonging or anywise appertaining, and the reversion
139 and reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property and possession, claim, and demand whatsoever, in law or in equity, of the said G. B. Lamar of, in, or to the same or any part or parcel thereof; to have and to hold the said wharves, lots, and lands and all and singular other the premises hereby granted, bargained, sold, aliened, and confirmed, with the hereditaments and appurtenances, unto the said Charles A. L. Lamar, his heirs and assigns, to the only use and behalf of the said Charles A. L. Lamar, his heirs and assigns forever, and to and for no other use, intent, or purpose whatsoever; and, lastly, the said Gazaway B. Lamar and his heirs, the said wharves, lots, and lands and premises unto the said Charles A. L. Lamar, his heirs and assigns, against the said Gazaway B. Lamar, his heirs, shall and will warrant and forever defend by the presents.

In witness whereof the said Gazaway B. Lamar hereunto set his hand and seal the day and year first above written.

GAZAWAY B. LAMAR.

Sealed and delivered in presence of us.
M. SPAIN VERDERY.
LEVI S. HART,
Justice of the Peace, Chatham County, Georgia.

140 "On the back of said deed:" G. B. Lamar to C. A. L. Lamar. Bill of sale to wharf, lands, presses, &c. Dec., 1863. "On the back of said deed:" Received for record December 31st, 1863. Thos. J. Bullock, deputy clerk S. C., C. C. "& below:" Georgia, Chatham county. Clerk's office, superior court. Recorded in County Record Book W W W, folios 94 and 95, this 31st day of December, A. D. 1863. Thos. J. Bullock, deputy clerk S. C., C. C.

Chatham Superior Court, January Term, 1868.

THE NATIONAL BANK OF THE REPUBLIC *et al.*, Compl'ts, and CAROLINE A. LAMAR, Adm'x Charles A. L. Lamar, Def't. } In Equity.

Answer of defendant.
Recorded.

LLOYD.

In Superior Court, Chatham County, January Term, 1868. In Equity.

THE NATIONAL BANK OF THE REPUBLIC and GAZAWAY B. LAMAR, Complainants, and CAROLINE A. LAMAR, Administratrix of the Estate of Charles A. L. Lamar, Defendant.

We, the jury, find that the said Charles A. L. Lamar, the

141 intestate of the defendant, received from the said Gazaway B. Lamar the conveyance dated the 31st day of December, A. D. 1863, and more particularly described in the answer of the said defendant, with full notice of the previous mortgage of part of the property therein mentioned from the said Gazaway B. Lamar to the said National Bank of the Republic; which said mortgage is more particularly described in the bill of the said complainants.

And we further find that the amount for which the said property is liable under the said mortgage is eighty-two thousand dollars, with interest from the 14th day of January, A. D. 1861, and the costs of the foreclosure of said mortgage, and that it will be for the benefit of the estate of the said Charles A. L. Lamar *of* the said debt be compounded by the payment out of said estate of the sum of eighty thousand dollars, with interest from the 21st day of February, A. D. 1868, or the securing of the same to the said National Bank of the Republic by bond or mortgage, as suggested in the said bill of complainants, and upon the terms and conditions therein set forth.

M'ch 6th, 1868.

T. HOLCOMBE, *Foreman.*

[Endorsed:] In superior court, Chatham county, January
142 term, 1868. In equity. The National Bank of the Republic *et al.*, compl'ts, and Caroline A. Lamar, adm'x, &c., def't. Verdict. Min., fol. 284, 285. Recorded.

In Superior Court, Chatham County. In Equity.

THE NATIONAL BANK OF THE REPUBLIC and GAZAWAY B. LAMAR, Complainants,
and
CAROLINE A. LAMAR, Adm'x of Estate of Charles A. L. Lamar, Defendant.

This cause came on to be heard upon bill, answer, exhibits, and proofs, and the jurors of the special jury, sworn, called, and chosen according to law, upon their oaths say: We, the jury, find that the said Charles A. L. Lamar, the intestate of the defendant, received from the said Gazaway B. Lamar the conveyance dated the 31st day of December, A. D. 1863, and more particularly described in the answer of the said defendant, with full notice of the previous mortgage of part of the property therein mentioned from the said Gazaway B. Lamar to the said The National Bank of the Republic, then known as the Bank of the Republic, which said mortgage is more particularly described in the bill of the said complainants; and we further find that the amount for which the said property is liable under the said mortgage is eighty-
143 two thousand dollars, with interest from the 14th day of January, A. D. 1861, and the costs of the foreclosure of said mortgage, and that it will be for the benefit of the said Charles A. L. Lamar *of* the said debt be compounded by the payment out of

said estate of the sum of eighty thousand dollars, with interest from the 21st day of February, A. D. 1868, or the securing of the same to the said The National Bank of the Republic by bond and mortgage, as suggested in the said bill of complainant-, and upon the terms and conditions therein set forth; and thereupon it is ordered, adjudged, and decreed that the said Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, deceased, is hereby authorized to compound the amount due to the The National Bank of the Republic on the mortgage referred to in the bill of complaint by making and delivering to the said The National Bank of the Republic, as administratrix as aforesaid, a bond for the penal sum of one hundred and sixty thousand dollars, conditioned to be void upon the payment of the sum of eighty thousand dollars, with interest from the twenty-first day of February, eighteen hundred and sixty-eight, in the following manner—that is to say, the sum of eight thousand dollars on each twenty-first day of February thereafter, with interest on the whole of the said principal sum then unpaid, and also a mortgage of all the property
144 described in the said conveyance from the said Gazaway B. Lamar to the said Charles A. L. Lamar—that is to say, of all those lots and wharves in the city of Savannah bounded on the east by the lot and wharf of the hydraulic press, on the south by a street, on the west by Willink's lots, and on the north by the Savannah river, together with lots lying south of the same, with the same eastern boundary, and all the lands owned by the said Gazaway B. Lamar at the time of said conveyance (the date whereof is the thirty-first day of December, eighteen hundred and sixty-three) lying east and south of the same, containing seventy-five acres, more or less, except the mill and lots on which it is erected, subject to the provisions of the contract made the eighteenth day of December, eighteen hundred and sixty-two, between the said Gazaway B. Lamar and the Atlantic and Gulf railroad; which said mortgage shall contain the provisions that no proceedings to foreclose the same for default in any of the payments specified in the said bond shall be commenced within six months after such default, and that in case of any such default it may be foreclosed for the whole of the principal sum above mentioned then unpaid, notwithstanding that some of the specified payments may not yet be due by the
145 terms of the said bond, with interest thereon; and in which said mortgage the said Caroline A. Lamar shall waive any and all right on claim of dower she may have in the said property or any part thereof as against the said mortgage, and the said mortgage shall have and constitute a valid lien upon the said property, the said administratrix being at liberty to pay the whole or any part of the debt at any time before due.

And it is further ordered, adjudged, and decreed that the said The National Bank of the Republic shall, upon the making and delivery of the said bond and mortgage, deliver up to the said Caroline A. Lamar, administratrix as aforesaid, to be cancelled the mortgage of the said Gazaway B. Lamar to the said The National Bank

of the Republic mentioned in the bill of complaint, and shall also return to the office of the clerk of this court the execution taken out in pursuance of the foreclosure of that mortgage, there to remain forever *imperative* and of no effect; and shall also give credit to the said Gazaway B. Lamar for the said sum of eighty thousand dollars as paid on the twenty-first day of February, eighteen hundred and sixty-eight, on the execution issued in pursuance of the judgement rendered against him for the debt which was secured by his said mortgage, the said execution to remain of force for the unpaid residue of the said debt.

146 And — is further ordered, adjudged, and decreed that the said Gazaway B. Lamar shall give credit to the estate of the said Charles A. L. Lamar for the said sum of eighty thousand dollars as paid on the said twenty-first day of February, eighteen hundred and sixty-eight, upon any and all claims he may have or assert against said estate, and that the property mortgaged by the said Caroline A. Lamar, administratrix as aforesaid, by virtue of this decree shall be henceforth entirely released from all liability for any debt which may be hereafter found due for any cause existing at or before the date of this decree from the said estate to the said Gazaway B. Lamar, and that no judgement which may hereafter be rendered in favor of the said Gazaway B. Lamar against the said estate upon any claim set up by him for any cause existing at or before the date of this decree shall bind or have any lien on the said property.

And it is further ordered, adjudged, and decreed that the said Caroline A. Lamar, administratrix as aforesaid, do pay the costs of this suit out of the said estate.

M'ch 6th, 1868.

W. B. FLEMING,
Judge, E. D., Geo.

147 [Endorsed:] In superior court, Chatham county, January term, 1868. In equity. The National Bank of the Republic *et al.*, compl't-, and Caroline A. Lamar, adm'x, &c., defend't. Decree. Min., fol. 285, 286. Recorded. Jackson, Lawton & Bassinger, compl'ts' sol'rs.

STATE OF GEORGIA, }
Chatham County, }

CLERK'S OFFICE, SUPERIOR COURT.

I, Barnard E. Bee, clerk of said superior court, do hereby certify the foregoing thirty-four and a fraction pages of writing to be a true and perfect transcript of the original bill for discovery and relief, answer, verdict, and decree in the equity case of The National Bank of the Republic *et al.*, complainant-, and Caroline A. Lamar, administratrix of Charles A. L. Lamar, deceased, defendant, as appears from the originals on file and of record in this office.

In testimony whereof I have hereunto set my official signature

and affixed the seal of said superior court this 12 day of July, A. D. 1887.

[Seal of Superior Court of Chatham Co., Georgia.]

BARNARD E. BEE,
Clerk S. C., C. C.

148 GEORGIA, }
Chatham County. }

I, A. P. Adams, presiding judge of the superior court of Chatham county, Georgia, a court of highest original jurisdiction and one of the courts of the eastern judicial circuit of Georgia, do hereby certify that Barnard E. Bee, whose name is subscribed to the proceeding exemplification, is the clerk of the said superior court of Chatham county, Georgia, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said superior court, and that the attestation thereof is in due form.

Witness my official signature this the 12th day of July, A. D. 1887.

A. P. ADAMS,
Judge S. C., E. J. C., Geo.

GEORGIA, }
Chatham County. }

CLERK'S OFFICE, SUPERIOR COURT.

I, Barnard E. Bee, clerk of the superior court of Chatham county, Georgia, do hereby certify that the Honorable A. P. Adams, whose name is subscribed to the proceeding certificate, is presiding judge of the superior court of Chatham county and of the superior
149 court of the eastern judicial circuit of Georgia, duly commissioned and sworn, and that the signature of said judge to said certificate is genuine, and that said court is a court of record.

In testimony whereof I have hereunto set my official signature and affixed the seal of said superior court this 12th day of July, A. D. 1887.

[Seal of Superior Court, Chatham County.]

BARNARD E. BEE,
Clerk S. C., C. C.

Minutes of Stenographer Containing the Oral Evidence & the Manner in which it was Offered and Excluded or Admitted.

Filed and transcribed by the order and with the approval of the court.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

FRANK CAZENOVE JONES *et al.*, Administrator, Complainants,
and
CAROLINE A. LAMAR *et al.*, Defendants.

Brief of Evidence.

Original bond given by Mrs. Lamar to the National Bank of the Republic in 1868 offered in evidence by Mr. Mercer, for complainants.

Mr. ERWIN: He must show the authority to make the bond.

150 Mr. MERCER: We offer a copy of the exemplified letters of administration, with the will annexed, to show the authority.

A remark was made relative to the will.

COURT: We will consider the will in the custody of the court for the present.

Mr. MERCER: We offer the mortgage made to secure that bond, dated 17th of March, 1868.

Mr. ERWIN: We object to that on reasons already stated, because it shows no power in the administratrix to make the bond.

COURT: That goes to the whole merits of the case. If you desire argument on it I will hear it.

Mr. ERWIN: The objection is that under the laws of Georgia the administratrix has no power to make the mortgage. Now, if there is power to make it, it is incumbent upon them to produce it. We have set up also by the plea that the mortgage is barred by the statute of limitations.

By the COURT: The evidence is admitted for the present.

The mortgage is read by Mr. Mercer.

Mr. MERCER: We offer the record of the superior court of Chatham county, duly certified according to the act of Congress, showing *to* authority under which Mrs. Lamar made this bond and mortgage.

The record is read by Mr. Mercer.

Mr. MERCER: We offer the assignment of this bond and mortgage to Mr. G. B. Lamar, dated 7th day of May, 1874, duly recorded

151 in the records of Chatham county.

Assignment of mortgage and bond read by Mr. Mercer.

Mr. MERCER: We close, with the right to rebut.

Mr. ERWIN: We demur to the evidence—that is, we insist that

the evidence submitted shows no claim on the part of complainants to equitable relief.

Argument at length then heard on the demurrer.

The COURT: Gentlemen, this question has been very elaborately argued, and has narrowed down to this: Here was a proceeding in which a trust estate was involved. It was not a personal matter of Mrs. Lamar at all. It was conceded by Captain Mercer that there were no proceedings against her personally. The proceeding was against her as administratrix. She came before the court in response to a bill filed which purported and was intended to compromise a certain dispute existing between Gazaway B. Lamar and the Bank of the Republic on the one side and the estate which she represented on the other side. That dispute arose in this manner: Her husband had bought from his father, Gazaway B. Lamar, a tract of land in this city. At the time it was bought it appeared, ostensibly, to be unencumbered. There were no mortgages on record against it; but years afterwards and after the period of time within — the laws of Georgia require a mortgage to be recorded a
mortgage given by Gazaway B. Lamar to the Bank of the
152 Republic was put upon record against this land, and a proceeding was taken to foreclose that mortgage. The widow, the administratrix, was then confronted with this large and, so far as the value of the property is concerned, destructive mortgage against the estate, against the land which her husband and intestate had bought from his father. The mortgage *fi. fa.* was issued — it was levied on the land. She puts in a claim to it, and then this bill was filed. It proposed a compromise. It stated, in effect, that the estate of her husband was indebted to Gazaway B. Lamar — more than eighty thousand dollars, and that if she would give a new mortgage to the Bank of the Republic, promising to pay a large portion of this debt, a portion of it will be remitted; and in further consideration that the estate will be credited with eighty thousand dollars, or about that sum, which it is stated was due by her husband to his father; but upon what account the credit was to be made is not stated. Very well, she assents to it. The decree is taken, which stipulates that she shall execute the mortgage, but stipulates further that Gazaway B. Lamar shall make the credit. She does execute the mortgage, and it is delivered to the Bank of the Republic. Well, now, that mortgage was given as a substitute
for the mortgage which Gazaway B. Lamar had originally
153 given upon that land, which land he had afterwards sold to her husband, and for which encumbrance he was liable to her husband's estate; but it turns up some years afterwards that the mortgage which she gave is in the hands of Gazaway B. Lamar, assigned to him. Was there any consideration moving from him to her to give the mortgage? These is or there is not. If there is a consideration, what is it? Why, it is the payment of eighty thousand dollars, or rather the credit of the eighty thousand dollars which he proposed to credit. If he did not do that, there is no other consideration moving from Gazaway B. Lamar to her and she

is under no obligation to pay his debt, and therefore when she has given her paper to become responsible for his debt and he comes and takes up that paper he is doing nothing more than paying his own debt; unless, indeed, there is another consideration between the parties, which takes it out of the equitable conditions which exist between him and the estate and places the mortgage in the attitude of other negotiable paper.

That, then, brings the question down to this one issue: Has he paid a consideration to the estate of Charles Lamar for issuing this mortgage to relieve the encumbrance on the estate which
154 Gazaway B. ought to have paid off?

And, again, has he complied with the conditions of the decree which authorized her to do that thing? If he has not done so, the case comes within the operation of the clear, distinct, and well-settled principle of the authorities read by Mr. Cunningham, and which are conceded to be effective by the counsel on the other side; if he has done so, why then the relations of the parties are apparently changed, and for the purpose of this argument the complainant is entitled to proceed and insist upon his equities. And therefore the court holds—

That before the complainants can proceed in this case they must show that they have given a credit to the estate of C. A. L. Lamar of eighty thousand dollars or the sum which is specified in the decree as the compromise between the parties in the case, and they must show a valid, subsisting debt upon which the credit could legally be made.

Examination Continued.

F. C. JONES sworn in open court for complainants.

Direct examination by Mr. MERCER:

—. Mr. Jones, can you produce any book or writing in Mr. Lamar's handwriting giving a credit to the estate of Charles A. L. Lamar for eighty thousand dollars?

—. I can, sir.

Q. Will you produce it?

(A book is produced by witness.) The court reads the entry.

155 Q. Was that same entry posted in the ledger?

A. The same entry was posted in the ledger.

Q. Are you or not familiar with the handwriting of Mr. G. B. L.?

A. I am familiar with his handwriting.

Q. Is or is not that in his handwriting?

A. That is in Mr. G. B. Lamar's handwriting.

Q. What is the date of that entry?

A. The exact date of the entry does not appear. The date at the head of the page is Savannah, March 9th, 1868, and another entry sets forth that the credit is to be made from the 17th day of March, 1868.

Q. That is the date the mortgage is due. What is the ledger entry, what is the date there?

A. The ledger entry is merely in the year 1868; the exact date is not to be found.

Q. Does the ledger entry refer to the journal entry?

A. The ledger entry refers to the page on which the journal entry is made.

Q. How is the ledger account entitled?

A. The account in the ledger is entitled "The estate of C. A. L. Lamar due."

Q. Was there a debit and credit side to it?

A. There was.

Q. Which side is it on?

A. This entry is on the credit side—credited to the estate of C. A. L. Lamar.

Cross-examination by Mr. ERWIN:

Q. Mr. Jones, did you ever see Mr. G. R. Lamar to know him?

A. Yes, sir.

156 Q. Did you ever see him write?

A. I can't say that I have actually seen him write. I have seen his handwriting.

Q. How do you know it *is* was his handwriting?

A. Just as I know my own, even though I don't recollect having written it.

Q. You have seen yourself write, have you not?

A. Yes, sir; I have seen myself write.

Q. That, probably, is the way you know your own handwriting. How do you know Mr. G. B. Lamar'- handwriting?

A. Because I am sufficient- familiar with his writing.

Q. Well, how do you know his handwriting?

A. I have seen various affidavits, mortgages, and letters which I knew were written by him.

Q. How do you know they were written by him?

A. Well, I——

By the COURT: You are his administrator?

A. Yes, sir.

Q. How did you get custody of these books?

A. I got custody of these books from the safe of the estate.

Q. You did not get them from Mr. G. B. Lamar?

A. No, sir.

Q. You have only been administrator about two years?

A. Only about two years.

Q. And I understand you to say you only know it is in his handwriting because they look like the handwriting in mortgages, affidavits, and other papers that were in his handwriting. Now, I

157 ask you how you know these mortgages, affidavits, &c., were in his handwriting.

A. I merely know because the affidavit- signed by the notary publics say that they witness his signature.

Q. Is that account in the ledger in his handwriting—the head of the account?

A. No, sir.

Q. The head of the account is not in the same handwriting?
A. No, sir.
Q. You say the journal entry is made in his handwriting?
A. Yes, sir.
Q. Are you possitive about that?
A. I am possitive about that. The entry in the ledger is in his handwriting, but the heading of the page is not in his handwriting.
Q. Now, of your own knowledge, you don't know whose books these are, do you?
A. Well, all I can say of these books is that I found them in the safe in which I suppose that he kept them. These are the books I found there.
Q. You never saw the books before his death?
A. No, sir.
Q. Are these two books the only books you found?
A. I found other books.
Q. How many altogether?
A. I found a great many; I would have to count them; somewhere in the neighborhood of ten or twelve—eight or ten.

Mr. ERWIN: I don't think the witness has proved the handwriting on the books.

158 The COURT: I am inclined to think it is sufficient to raise the presumption that it is his handwriting, which will admit them, so far as that is concerned.

Col. GEORGE A. MERCER sworn for complainants.

Direct examination by Gen. JACKSON:

Q. Col. Mercer, are you familiar with the handwriting of Mr. G. B. Lamar?
A. Yes, sir.
Q. How did you become familiar with it?
A. Mr. Lamar was a client of mine before his death and I had a good deal of correspondence with him. I have many letters of his in my files. I have seen his handwriting. I would undertake to identify his handwriting anywhere.
Q. Will you look at these books and say if this is his handwriting?
A. Yes, sir; I will swear that it is his handwriting.

Cross-examination by Mr. ERWIN:

Q. I have only one question to ask. I want to identify the signature to this paper (handing witness paper). Is that his signature?
A. Yes, sir.
Q. And the other signature, is that his signature?
A. What signature—the National Bank of the Republic?
Q. The other signature.
A. Yes, sir.
Q. Is that Mr. Lloyd's signature (indicating on paper)?

A. I would take it for his signature. There is only one
159 thing I would say about Mr. Lloyd's signature: Mr. Saussy has often imitated his signature so that I could not tell.

By the COURT: What was Mr. Lamar'- occupation in his lifetime?

A. He was president of the Bank of Commerce while he was living in Savannah. He was president of the Bank of the Republic at the time of his death.

The COURT: Is there objection to the evidence?

Mr. ERWIN: We wish it distinctly understood that if the object of that evidence is to show that on the 6th day of March, 1868, Mr. G. B. Lamar carried a credit to the extent of eighty thousand dollars to the estate of C. A. L. Lamar we have no objection.

FRANK C. JONES recalled:

Q. Mr. Jones, look at that letter you have in your hand and say where you got it from—from whose custody it came?

A. I found this letter in the safe belonging to the estate of G. B. Lamar, where the late executor, G. De Rosett Lamar, kept the papers appertaining to that estate.

Q. Is that letter addressed to him?

A. It is.

Q. That is the original letter you found among his papers?

A. That is the original letter I found among his papers.

Q. Is there any indorsement on it?

A. It is endorsed on the back in the handwriting of Mr. G. De Rosett Lamar.

Q. Are you familiar with his handwriting?

A. I am, sir.

160 Q. Was he formerly executor of the estate of G. B. Lamar?

A. Yes, sir.

Mr. MERCER: We offer this letter in evidence with the object of establishing an — in reference to that decree and mortgage.

The COURT: I am inclined to think that it is admissible.

Mr. MERCER: We will reserve the letter in case we need it.

Mr. MERCER: We close here, reserving the right to rebut.

Mr. DU BIGNON: We renew the motion upon demurrer made on yesterday. As the case now stands, with the additional facts brought out by the evidence of Mr. Jones, all the proof of the entry is that on the 17th day of March Mr. G. B. Lamar credited the estate of C. A. L. Lamar with eighty thousand dollars.

F. C. JONES recalled:

Q. Mr. Jones, look at that entry again which you have just identified and say whether or, not that is a part of an account, as appears from that ledger, against the estate of C. A. L. Lamar?

A. That is an entry on account.

Mr. MERCER: We offer the account in evidence as contained in that book.

Mr. F. C. JONES recalled:

Q. Mr. Jones, will you state to the court, so that the court can hear you, where you got these books that have been introduced?

A. I got these books from the safes belonging to the estate of G. B. Lamar.

161 Q. Did you or not ever see any other books of Mr. G. B. Lamar's except these particular books that you have referred to?

A. I have never seen any other books.

Q. How far back do they go—do the entries go back?

A. Well, all the old entries go back in the '50's; exactly how far back I could not say.

Q. Did you or not ever hear of or are you acquainted with any books of Mr. Lamar's except these particular books?

A. No. I stated it went way back. I could not tell exactly what the earliest date was. I don't mean to confine myself to the '50's alone.

Q. Well, just look at the entries in this book and say how far back they go.

The COURT: I don't think we need go any further on that question.

Cross-examination by Mr. ERWIN:

Q. Do you know anything about book-keeping?

A. Yes, sir.

Q. Don't you know that a journal is not a book of original entry?

A. A journal is not a book of original entry. A journal kept as this journal is kept is a book of original entry.

Q. Well, now, is that journal original entry as to the cash items?

A. This journal is kept both as a journal and cash book.

Q. Then it is not only a journal; it is a journal and a cash book?

A. Yes, sir.

Q. How do you know there was not a separate cash book and day book?

162 A. Because I merely know by seeing these entries made in that book, and I find entries in there of cash.

Q. Well, would not cash entries be posted from the cash book to the journal?

A. Yes, sir.

Q. Well, then, what evidence have you got that there was not a day book and cash book, which is the book of original entry?

A. Merely that I find these books there and find them used, and don't find those. I find this book used as cash book.

Q. Will you explain to the court why there was not a cash book and day book going along with that journal, from which that journal was posted?

A. Simply as I say—that this is the book I found.

Q. Well, now, suppose you had found a ledger and had not found a journal, would you have come to the conclusion there was no journal?

A. No, sir.

Q. Well, then, why, when you find a journal and do not find a day book and cash book, — you come to the conclusion there was no day book and cash book?

A. Because when I find a journal used as cash book I infer that, as is frequently done with books kept in the way Mr. Lamar kept his books, to save trouble he would condense the two.

Q. Now, as a matter of fact, by looking at that journal
163 you cannot testify positively as to whether there was a day book and cash book or not?

A. Well, I suppose it would be impossible for any man to say there had not been, that there might not have been, at some time an entry book in which that entry was made.

Q. Now, scattered all through that book don't you find other handwriting besides Mr. G. B. Lamar's?

A. I do; yes, sir.

Q. All through it?

A. Yes, sir.

Q. Do you know how these persons made up the accounts?

A. Yes, sir. These persons were book-keepers in the employ of Mr. G. B. Lamar.

Q. How do you know that?

A. By recognizing the writing of the people. I find various affidavits among the papers, which are sworn to by notary publics, showing that this signature to this affidavit was made by, for instance, Adam S. Lawson. I know Adam S. Lawson was bookkeeper in the employ of Mr. G. B. Lamar.

Q. How do you know that?

A. I know that from seeing letters——

Q. Of your own personal knowledge, you don't know anything about it?

A. No, sir. From my own personal knowledge, Adam S. Lawson was dead before I had any connection with it.

Q. There are several enteries in there in other handwriting, are there not?

164 A. Yes, sir. I think I can swear to that handwriting being the same as I have seen sworn to by a notary public.

Q. How do you know they — swore to?

A. I saw the signature of the notary public.

Q. Now, these books you have testified — on the information you have you say were the private books of Mr. G. B. Lamar?

A. I say that these books are the books in which Mr. G. B. Lamar kept account of transactions with various people.

Q. Of all of his different sorts of business?

A. Different sorts of business.

Q. Any business that he might be engaged in?

A. Yes, sir.

Q. These entries here (indicating) are not in Mr. Lamar's handwriting?

A. No, sir.

Q. And all these last items are not in his handwriting?
A. The last handwriting here of Mr. Lamar's is May, 1874.

CHARLES C. BEAMAN, Esq., sworn for complainants.

Direct examination by Mr. MERCER:

Q. Mr. Beaman, will you be good enough to state to the court whether you have any acquaintance with these books, and where that acquaintance originated?

A. It began with the year 1874 or '5, I being of the firm of Dickson and Beaman, lawyers, of New York city, — were the counsel of De Rosett Lamar, executor of Gazaway B. Lamar. These
165 books are familiar to me in the business that I have had to do in the litigation of this estate. This journal book we offered in evidence in the case of Cheever *vs.* Lamar when Mr. De Rosett Lamar was alive and when this Mr. Lawson referred to testified. They were marked by the initials of "W. G. C.," and W. G. C. was William G. Choate, who was afterwards district judge of the United States. They also have the initials "H. J. S."—Henry J. Scudder—who was also referee in the subsequent stages of the litigation. I knew these books continuously in the proceedings before Mr. Scudder until after Mr. De Rosett Lamar's death; was a party to the taking out of letters of administration, with the will annexed, for Mr. Jones, and went with Mr. Jones to get the books in Mr. De Rosett's safes.

Q. Did you ever know of any other books belonging to the estate of G. B. Lamar except the books Mr. Jones referred to?

A. No, sir. Of the large number of books he has brought here I have seen in these litigations, and they are the only ones I have seen or know of. They were very carefully kept by Mr. De Rosett Lamar during his life.

Q. Were or were not, as a matter of fact, these books admitted in the Lamar and Cheever case?

A. They were.

Mr. ERWIN: We object.

The COURT: I think I am satisfied that the books were
166 genuine. They were irregularly kept, but I have no idea from the appearance of the books and the testimony submitted that there were any other books.

Q. Do you know anything upon the subject of Mr. Lamar's habits?

A. I never knew Mr. Lamar.

Cross-examination by Mr. ERWIN:

Q. In that Cheever suit were Mrs. Caroline A. Lamar and children — to it?

A. I think not.

Q. How long were you counsel in that case, Mr. Beaman?

A. Cheever & Lamar case?

Q. Yes.

A. From about '75 or '76 until subsequent to Mr. De Rosett Lamar's death, which was about two years ago.

Q. You were constantly engaged in it in one way or another?

A. Yes, sir. It went before one referee and up to the general term of the supreme court and then came before another referee and he died.

Q. You don't recollect whether Mrs. Lamar was a party to it?

A. I think she was not, to the best of my recollection. I have no doubt about it. She did not appear by any counsel, and we did not represent her.

Q. Mr. Cheevers was suing Mr. G. B. Lamar?

A. Yes, sir.

Mr. Mercer reads testimony of T. H. Porter, Donald W. McLeod, and G. Houston.

167 Mr. DU BIGNON: We have some object-s to those interrogatories?

The COURT: I think that that portion of the interrogatories which relates to the death of the book-keeper is admissible.

Counsel for defendants ask for five minutes to inspect books. Granted and books are undergoing inspection.

Mr. Erwin argues question as to books being books of original entry.

Mr. ERWIN: We move to exclude every bit of this testimony except the entry in the journal showing that we have a credit of $80,000.00.

The COURT: The object of all evidence, gentlemen, is to ascertain truth. That is the object of proceedings in court—to ascertain the truth; and when ascertained to determine what are the rights of the parties in the light of the truth. In order, therefore, to ascertain what are the rights of the parties, we must have the truth. The rules of evidence, made in order that we may obtain this truth, may seem to be, when casually considered, as of little utility, but the experience of wise men and great lawyers in all periods of our jurisprudence have taught us the importance and value of these rules, that by them we can the better get at the truth and avoid mistakes.

One of these rules is that the best evidence that the nature of a case admits of must always be presented. The testimony of
168 Gazaway B. Lamar, if he were living and were otherwise competent to testify, or the testimony of any other witnesses who can prove the existence of a claim against the estate of C. A. L. Lamar, would be better evidence than the books; but on account of the necessities of the business community books are made admissible in evidence. At best they are but secondary evidence. They are not, therefore, the best evidence unless they possess and are accompanied with certain requisites and requirements which are provided by the statute law of the State, and that statute law controls in the U. S. courts unless there is a statute of the U. S. varying in some particular the law of evidence. Now, what is that State law? I read from the Code of Georgia: "Book- of account are admissible.

The books of account of any merchant, shop-keeper, physician, blacksmith, or other persons doing a regular business and keeping daily entries thereof may be admitted in evidence as proof of such accounts upon the following conditions:

"1st. If he kept no clerk or else the clerk is dead or otherwise inaccessible."

What is the object of that rule? Because it is presumed that if the clerk were alive his testimony would be better than the account which is given in the books.

"Second. Upon the proof, the parties' oath being sufficient,
169 that the book is the book of original entries.

"Third. Upon proof by his customers that he usually kept correct books.

"Fourth. Upon inspection by the court to see if the books are free from any suspicion;"

For it is only when these and all of these requisites exist that the books of account are admissible as evidence, because, as I have said, they are not to be considered the best evidence unless these requirements of the statute exist. Very well; are these books now admissible under this statute? In the first place, whose books are they? Are they the books of a merchant, shop-keeper, physician, blacksmith, or other person doing a regular business and keeping daily entries thereof? *That* word- "other person" must be considered *ejusdem generis*. Was Mr. Gazaway B. Lamar a merchant, shop-keeper, physician, blacksmith, or other person who did a business which required the keeping of books and — d*ia*ly entries in books? Upon that point I am not very clear and do not place the decision upon it; but it seems to me, from the evidence and from inspection by the court, that these books do not contain daily entries; they were more in the nature of memoranda which a gentleman kept of his private concerns. It was entirely with him when he would put these entries down. He did not have transactions every day;
170 but, aside from that and without passing on that point more than merely to advert to it, most clearly this is not a book of "original entry." The book of original entries might consist of the journal, and, under certain circumstances, I am inclined to think the ledger could be so considered; certainly the ledger could be considered as showing that it was a regular system of books kept; but these circumstances do not exist here. I think that the testimony is sufficient to show that he kept correct books. I am inclined to think the nature of his business was such as would admit his books in evidence under the provisions of this statute; but, without passing upon that point, I am compelled to hold that this evidence is not admissible. If it was admissible for any purpose, it might show that Gazaway B. Lamar asserted a claim against the estate of C. A. L. Lamar; but it is not admissible, because it is not the evidence the statute requires, and not evidence, for the reason that it is not the best evidence of which the nature of the case admits.

I have very carefully and attentively considered all the argu-

ments on this question and I am compelled to hold that this book is not evidence. I mean the ledger that is offered.

(NOTE.—Counsel for complainants offered the books sep-
171 arately, and this decision applies — an isolated ledger.—Emory Speer, judge.)

Mr. MERCER: We next offer the preceding ledger.

Mr. ERWIN: We object because there has been no proof of handwriting in this book.

Mr. F. C. JONES, for complainants.

Direct examination by Mr. Beaman:

Mr. Jones, in the ledger you examined yesterday, at the top of the page, on the debtor side of the account, are these words: Balance from old ledger, 474, in currency, 1861, $65,889.76. Do you find among the books anything that you suppose is the old ledger there referred to?

A. I do, sir.

Q. Will you please produce that book?

A. I have the book in my hand.

Q. Will you please turn to page 474 of that ledger and state if you find any balance there corresponding with the balance I have just read, $65,889.76?

A. On page 474 I find "To balance 1st of January, $65,889.76."

Q. Is that written in Mr. Lamar's handwriting?

A. It is, sir.

Q. On that page that you have before you, Mr. Jones, on the ledger, what is the date of the earliest item?

A. The earliest item on the debtor side is December 31st, 1863, and on the credit side it is December 31st, 1863.

Q. How is the account headed?

A. The account is headed C. A. L. Lamar.

172 Q. In whose handwriting are the entries on that page?

A. All the entries on this page under the head of C. A. L. Lamar are in the handwriting of Mr. G. B. Lamar.

Q. Does that page of the ledger that you have refer to previous pages of the ledger?

A. It does, sir.

Q. And are those pages like others in that book?

A. They are, sir.

Q. Is this book that you now have one of the books of which you testified yesterday?

A. This identical book I did not have yesterday.

Q. But this is one of the books which you testified as having received from Mr. De Rosett Lamar?

A. This is one of the books that I received—got from the safe of the estate. This is what I understand to be the old ledger as it is carried forward from the other ledger and entered in this, and the reference from that ledger comes back with exact data to this ledger.

Cross-examination by Mr. ERWIN:

—. Mr. Jones, is that balance stated to be carried forward to the new ledger?

A. The balance that I recited simply says: "To balance, 1st January, 186–;" it looks as if it was intended for "'62."

Q. There is a statement there that balance is carried forward from this book. Will you look on that page and see if there is any balance carried forward to the new ledger?

173 A. There is, on the opposite page—on the credit side of the page—in Mr. G. B. Lamar's handwriting, "Balance to new ledger."

Q. Are there no entries in Mr. Lamar's handwriting for the first balance you refer to and read therefrom?

A. Yes, sir.

Q. So that that was the balance closed in that book?

A. I will state there was an apparent error in the book-keeping there. The balance is actually sixty-five, as shown by the figures, but instead of carrying the balance forward he carried the credit and debit side both forward.

Q. Has not the six hundred thousand been changed?

A. The six has not been changed; here it is in Mr. Lamar's handwriting, 675.

Q. The balance actually stated to be carried forward there is not carried forward?

A. No, sir; that is not carried forward. Instead of carrying the balance forward the items themselves are carried forward.

Q. I understand you to say clearly the balance stated to be carried forward is not carried forward?

A. The items here—"balance to new ledger"—is not carried forward. The details are carried forward.

Q. That shows that book started back on that account?

A. The account in the new book started——

Q. Anterior to the balance in the old book?

A. No, sir; I don't so understand it. Instead of taking the balance forward the items on either side are taken forward.

174 Q. That is to say, he carried forward Mr. Lamar's handwriting instead of taking the balance that he struck himself.

A. The balance that he struck is struck in the handwriting of Mr. Adam S. Lawson.

Q. I understand you to say that is Mr. Adam S. Lawson's handwriting?

A. Yes, sir; my reasons for saying that is in some particulars possibly stronger than my identification of Mr. Lamar's handwriting. I have seen various accounts sworn to before notaries public in which the notary swore that that was Mr. Adam S. Lawson's handwriting.

Q. Are you acquainted with the notary public?

A. No, sir.

Q. How do you know it was the notary public's signature?

A. Because I see his seal and I see the handwriting identified and sworn to subsequently by witnesses.

Q. Now, did not you testify yesterday that this is his handwriting down here in what you call the new ledger?

A. I did not, sir; I testified as to the top of the page.

Q. You never saw Mr. Adam S. Lawsons write?

A. Never saw him write.

Q. Never saw any writing which he acknowledged to be his signature?

A. Never had any communication with him.

Q. He died before you ever heard anything at all about it?

A. Yes, sir.

Q. That account in the old ledger starts in 1863, don't it?

175 A. On this page it starts in 1863.

Q. Is not this balance brought down as of 1st January, 1862? Is not that a fact?

A. No, sir; there is no balance actually brought down; the details are.

Q. What is that item there (indicating on page)?

A. To balance 1st January, 1862.

Q. So that that account closes with the balance ended by the year?

A. It shows that the date there, 1862, is not correct; it was a clerical error.

Q. It was a later date?

A. Yes, sir.

Q. Look in this account and see if you don't find it dated there 1st January, 1861?

A. Yes, sir; 1861.

Q. So that ledger starts off with 1863 and winds up with the balance there in 1863 (indicating on the page)?

A. I say that no balance is carried forward. The figures show clearly that it was an error; instead of carrying forward the balance they carried forward the items of the account. The two items, December 31st, 1863——

Q. Now, you have already read that to show that that was the balance on January 1st, 1862. Now, you say that entry was evidently a mistake; that that entry of 1st of January, 1862, must have been some later date?

A. I will state Mr. Erwin, that we have December 1st, 1864,

176 between the date of that entry, and then in the same entry is account as of January 1st, 1862.

Q. Now, just there, go back and look on the credit side of the account and see if you don't see, about the middle, some balance brought down from the middle of that account into that; so that you have got on the credit side of that account, up there, United States currency, 1861, and Confederate currency, 1863—two items.

A. I take it, Mr. Erwin, that this balance has been carried back.

Q. Can't you answer that question? So that you have got on the credit side of that account Confederate currency, 1863, one item of one hundred and odd thousand dollars, and United States currency, 1861, item of sixty-five thousand and odd dollars?

A. I have, sir.

Q. Now, are these two items added in striking the balance there?

A. I could not say without adding the entire account up and seeing whether this is included.

Q. Now, you testified yesterday that you were a book-keeper?

A. I am, sir; that is to say, I am not a book-keeper, but I have charge of books. Although I am not an accountant, I understand accounts. I claim that the balance struck is right if you go into the details.

177 The COURT: Is there anything there to show that deduction was made on account of the inferior value of Confederate money?

A. There is throughout the accounts.

The COURT: Here in this place?

A. There is nothing here to show without going into the details.

Q. Then in this place that account is closed by balance?

A. Yes, sir.

Q. Two items in there are stated to be one in Confederate currency and another in United States currency, and a balance is struck on that account?

A. The only balance I see being struck of these accounts is sixty-five thousand dollars.

Mr. ERWIN: That is the balance struck and that is as of United States currency?

A. Yes, sir.

Q. Now, don't it follow that one of two things is so—either that that balance is erroneous or that the additions were erroneous?

A. No, sir; if you figure it up the balance is probably more than $65,085.76. My idea is that the balance was probably struck after the war.

Q. So then that is what I am getting at. That account was kept after the war?

A. The ledger balance was not struck until some time after the war.

Q. That balance of $65,000.00?

A. Yes, sir.

178 Q. And yet I find that balance of $65,000.00 right in the middle of the account, with dates as of during the war. Is not that so?

A. I find——

Q. Don't you find dates there in 1864?

A. Yes, sir.

Q. So that that balance was not made until actually after the war?

A. My understanding of this is that this balance was struck at any time after the date of the latest entry.

Q. Now, then, don't this follow: The items on that you say are later in date. How in the world did that item, sixty-five, apparently get in the middle of the account?

A. I don't take it that it is in the middle of the account.

Q. Is not that item down below it (indicating)?

A. The only item below this on this side is "Balance, Confederate currency."

Q. But here, is not that balance purported to be brought down on December 1st, 1864?

A. Yes, sir.

Q. That is the day it purports to be brought down, and yet you say that balance up here of sixty-five thousand dollars was evidently struck after the war. Is not that so?

A. It has the appearance of having been reduced. I don't say that it is struck after the war. I say that the balance cannot be struck until after the date of the latest entry.

Q. Is it not brought down to December 1st, 1864?

179 A. It is brought down.

Q. Don't it purport to have been struck at that time?

A. Yes, sir.

Q. Now, then, you still say, notwithstanding that error, it is evident to your mind that that balance was reduced to United States currency after the war?

A. After the date of the last entry.

Q. Which was after the war?

A. The date of the last entry is some time in 1864. I take it that a ledger is very rarely posted all at once, and this ledger was evidently not posted——

Q. But do you post first in one year and then post in the year before?

A. That sometimes happens in business. My understanding of this account is that "reduced to currency of 1861," whatever the value of 1861 might have been, the balance is $65,089.76. This balance is dated as of December 1st, 1864.

Q. Are these the same books which were produced before the commissioners who examined Mess. McLeod, Houston, and Porter?

A. These are the same books.

Q. How do you know that?

A. All that I know is that I saw the commissioner's signature.

Q. Were you there?

A. I took the books to them.

Q. Were you there when the witnesses were examined?

A. I was there.

Q. During the whole of the examination?

A. Not during the whole of the examination.

180 Q. Now, as a matter of fact, didn't you point out to these witnesses at that examination the places in these books to which they refer in their testimony?

A. As a matter of fact, I opened the books at these places and pointed them out.

Mr. ERWIN: We move to exclude from evidence the book offered, on the ground that it appears from an inspection of the accounts that the account was not regularly kept; that it commences with an item in 1863 and concluded with an item in 1864, and has in the middle of it items reduced to United States currency, thereby

indicating that that entry was made after the war; that the dates do not run regularly, some entries purporting to be made in 1861 and 1862 appearing after entries purporting to be made in 1863 and 1864; that the book is incorrectly kept and is therefore inadmissible. We move also to exclude these answers because it appears from Mr. Jones' testimony that he was a party to the case, being represent- during the taking of the testimony, and pointed out to witnesses parts of the books about which they testify, thereby making the whole testimony of these witnesses inadmissible, and more especially as in the interrogatories the witnesses are asked about books without describing what books, and we were thereby
181 deprived of our right to cross-examine witnesses as to these books.

(NOTE.—Counsel for complainant did not argue this motion at this time.—Emory Speer, judge.)

Examination continued:

Mr. J. C. JONES: I was not present when Mr. Porter testified.

The COURT: I am compelled to hold that the books were not correctly kept, and, not being correctly kept, they are inadmissible for any purpose under the law of Georgia.

Mr. MERCER: We next offer this petition of Mr. G. B. Lamar, which was filed in 1868, as evidence of the assertion of a claim on his part against the estate of C. A. L. Lamar.

The COURT: It may be possible, gentlemen, that the court is wrong in its conclusions—to err is human—but I trust that the learned counsel will also bear in mind that to forgive is divine. It is a source of great happiness to the court to know that if there is error it will only be a matter of delay, and that you can get the error corrected and your rights reinstated, because it relieves the court from the dangerous responsibility which would otherwise be imposed.

As I see this case, this is nothing but a simple attempt on the part of Gazaway B. Lamar to assert a claim for eighty thousand dollars against the estate of Charles A. L. Lamar, represented by the
182 administratrix here. In the first place, Gazaway B. Lamar sold land to Charles Lamar with warranty of title. He was bound to sell that land unencumbered and convey good title; but it appeared that he did not do that, because he had previously given a large mortgage, amounting to more than one hundred thousand dollars, to the Bank of the Republic. That mortgage was not recorded, and Mrs. Lamar was compelled to meet it—assume it—by the proceedings in the State court, and the complainants now offer evidence to show that there was a previous claim on the part of Gazaway B. Lamar against C. A. L. Lamar to meet the equities against the former consequent upon this action of the administratrix. Well, now, that claim is of the first importance to the complainants because unless that exists and unless Gazaway B. Lamar has that for a consideration for his failure to take up the mortgage, which he was bound to take up, why, necessarily, when he bought the mortgage he did no more than he ought to have done. Very

well; this is a court of equity; it is not going to stick in the bark and look solely at what appears on the face of these papers; it will look clear through to the substantial facts. Gazaway B. Lamar was bound to pay that mortgage, in honor and in equity.
183 He did not do it; the administratrix had it to do. She had it to do because otherwise the land of the estate would have been sold by its foreclosure. Very well; if afterwards Gazaway B. Lamar came into possession of that mortgage even by paying its face value, that is no more than he ought to have done, unless his son and her husband *was* indebted to him in an amount which would adequately compensate the estate as consideration for a release of Gazaway B. Lamar on his deed of warranty. Well, now, this is the case of a trust estate, and can the court hold that the trust estate is indebted in the amount of eighty thousand dollars just because it is asserted that it is so? I have held and I am perfectly clear that Gazaway B. Lamar was bound to pay that mortgage unless C. A. L. Lamar was indebted to him in the sum equivalent to it. You must make out that there was a claim against C. A. L. Lamar, and that the credit was given upon that. I have held, for the purposes of the motion upon demurrer, that if you show the claim existed you could go on with the case and we would determine hereafter whether or not the claim was a valid one; but the proof does not show that the claim existed, except by the production of books which, under the law of Georgia, I cannot ad-
184 mit because of their apparent defects. You produce that which is not evidence and ask me to find that a thing exists which you proposed to prove by these book-, which I am compelled to say are not evidence. Now, also, you produce an assertion, that is signed by the counsel, Jackson, Lawton & Bassinger, to the effect that there was more than eighty thousand dollars due from C. A. L. Lamar to G. B. Lamar; and if I were to hold that that was a sufficient proof I would go further, I am sure, than any other court has ever done towards saddling a trust estate with an intangible claim. You must put your claim, not upon the assertion of G. B. Lamar or his counsel, but upon the legal evidence, which at least shows the claim existed and which will charge the estate. You have not done that, gentlemen, and if the superior court of Chatham county allows Mrs. Lamar, as administratrix, to saddle her trust estate with a claim of eighty thousand dollars, without proof that there was such a claim, its action was absolutely void, and could be so declared anywhere at the instance of the beneficiaries of the trust, who were not parties and who are codefendants here; so I am compelled to exclude this evidence.

Mr. MERCER: We next offer in evidence letter and ac-
185 count, which were produced yesterday under notice, to show the assertion of a claim by G. B. Lamar against the estate of C. A. L. Lamar. (The notice is in the following form: "The *pro forma* account rendered by Gazaway B. Lamar to said Caroline A. Lamar, administratrix, for losses on the guano, the balance of account due him, besides the cotton transactions referred to in his said letter to her of May 8th, 1869.")

Mr. ERWIN: We object to that on the ground that it is nothing more than a statement on the part of the party himself.

The letter and account were read and are in the following form:

* * * * * * *

SAVANNAH, *Ap'l* 12, 1866.

Mrs. Caroline A. Lamar, adm'x estate C. A. L. Lamar.

DEAR CARO.: Annexed and enclosed I present my accounts, as far as adjusted, with the estate of C. A. L. Lamar, of which you are administratrix.

The one in gold currency was for various advances before the war		$65,089 76
& loss on guano (estimated at)		60,000 00
& his part, 1,390 bales cotton burnt at Montgomery		6,010 79
		$131,100 55
The ac. in C. S. currency is for items ascertained	$245,685 95	
The other items estimated at	50,000 00	
		295,685 95
		$426,786 50

186 I am, &c., G. B. LAMAR.

(*Account Annexed.*)

Estate of C. A. L. Lamar to G. B. Lamar, Dr.

1864.		
Dec. 1. To balance of old account, in gold currency, before the war, as rendered		$65,089 76
" half the loss on guano purchased and sold and on the notes not paid, for which it was sold in 1860 & 1861, not yet ascertained		
" half loss on his and my part of 1,390 bales cotton, jt. ac. with H. Lafone, which were burned at Montgomery, Ala.		

(*Account Enclosed.*)

Estate C. A. L. Lamar to G. B. Lamar, Dr.

1864.		
Dec. 1. To balance ac. rendered, in currency, advanced from 1862 to 1864, inc.		$106,509 42
To half loss on cotton bonds		71,393 40
To half loss of cotton on jt. ac. with him, which has been taken by the U. States		67,723 13
To half loss on cotton bought for jt. ac. with C. A. L. Lamar and W. Cheever, not yet adjusted, cotton taken by the U. States military and held by them		
To advance to W. W. Cheever for buying cotton on jt. ac. which were not invested, not yet fully ascertained		

Besides interest on the items.

187 These accounts — entitled to some credits not yet fully ascertained, among which the principal item is profits on tobacco, $23,008.21 in C. S. currency.

The COURT: I think, gentlemen, this letter is incompetent to establish the existence of a valid claim against the estate of C. A. L. Lamar. In the first place, it is merely a declaration by G. B. Lamar, not even sworn to. It is a letter purporting to state what is the condition of the account between himself and his dead son, but it is altogether insufficient. He states a large number of credits are to be allowed not yet ascertained; that profits on certain transactions are to be computed, not yet fixed. Portions of it are scratched out. Here is one, for instance: "To half loss on cotton taken by United States military and held by them"—no figures run out. "To advances to W. W. Cheever for buying cotton on joint account, which were not invested, not yet fully ascertained." Besides, it is totally indefinite and insufficient. The character of this claim against the estate of C. A. L. Lamar appears from this whole transaction, and not only from the evidence but from the pleadings; that the superior court, when it passed upon this matter, never looked into it at all. The entire transaction must have been a proceeding by consent. It could have had no proof before it of the existence of such claims, because if there had been such proof counsel would have offered it in this proceedings here. It is made the duty of Mrs. Lamar to make an inventory of all the debts due her estate

188 and of the debts claimed against her estate. She is presumed, in the absence of proof to the contrary, to have made such an inventory, and that inventory is now a part of the records in the office of the ordinary of this county. The inventory would show the debts due the estate, and would show the debts due by the estate, and such proof as that is the proof that is required by the law in order to show that the claim exists against the estate that has been made. If G. B. Lamar, who wrote this letter which is not sworn to, were in life he would not be permitted to testify; and can a court of equity, upon proof of that sort, saddle an estate with a liability of more than one hundred thousand dollars or with any liability? I do not so understand the law; and while the mortgage taken upon that transaction may have been sufficiently valid in the hands of a third party, nevertheless in the hands of G. B. Lamar himself, who was a party to it and must have known of the deficiencies in proof and pleading which existed and upon which the decree was taken, there is no vitality in the mortgage. Before you proceed here you must show not only that G. B. Lamar gave a credit of eighty thousand dollars in consideration of the mortgage executed by her to take up his debt, but that that credit was upon an account which existed between him and the estate of her dead husband.

189 Mr. MERCER: We offer these letters in evidence.

F. C. JONES recalled for complainants.

Direct examination by Mr. MERCER:

Q. Mr. Jones, will you look at these letters and state to the court where they came from?

A. I found these letters in the safe of the estate of G. B. Lamar.

Q. Just read the dates of these letters, so that the short hand reporter can get them down in the order of date.

A. December 4th, 1886; September 26th, 1870; July 16th, 1874; May 23rd, 1881.

Q. Mr. Jones, take the earliest one of those letters, which bear-date December 4th, 1866, and state whether or not that is the earliest letter you found among the papers from Mrs. Lamar, subsequent to the date of that report which has just been offered. Is or is *it* not that the first letter you found subsequent to April 12, 1866?

A. This letter dated December 4th, 1866, is the first letter I found among the papers subsequent to the date of April 12th, 1866, and is signed by Caro. A. L. Lamar.

Counsel for defendants admits that the letters referred to are signed by Mrs. C. A. L. Lamar.

Mr. ERWIN: We object to the letters on the ground that they are irrelevant, one only being written before the mortgage.

The COURT: I think the letters are admissible and are supposed to be upon the minutes.

F. C. JONES recalled for complainants:

190 Q. Mr. Jones, what were the names of these two book-keepers in the employ of Mr. G. B. Lamar during his life-time?

The COURT: Speak of your own knowledge.

A. My own knowledge, so far as it goes, is that their names were Adam S. Lawson and W. N. Houston. As I stated before, I found there evidence that they had kept the accounts, and I found memoranda by Mr. De Rosett Lamar, in his own handwriting, to his book-keepers. That is as far as my knowledge goes.

Q. Mr. Jones, did you or did you not make efforts to find these parties?

A. I made efforts to find them. I found addresses on memorandum books of the late executor, De Rosett Lamar, and upon calling at those addresses I found, as regards Adam S. Lawson, his employer, Daniel W. McLeod. Mr. McLeod stated that he had employed Adam S. Lawson as book-keeper.

Q. Just state what he said about his whereabouts.

Mr. ERWIN: We object to that as hearsay.

The COURT: We will hear what witness has to say further.

Q. Mr. Jones, just tell what search you made, without stating what anybody else told you.

A. I found, to the best of my knowledge, the address of the book-

keeper, Adam S. Lawson. I went to that address and there all the information I could ascertain was that Mr. Lawson was
191 dead. I then knew of no other place to search for him and I gave up the search.

Q. Is that the only place you could hear of or where you would be likely to find him or hear of him?

A. That is the only place. I understood that he was employed there.

Q. Now, in reference to the other man, Mr. Houston, did you make any effort to discover him?

A. I found an address which was purported to be that of the brother of Mr. Houston, and, as it was a Mr. Houston of a similar name, I called to that address, and there I inquired for Mr. Gavin Houston. I was shown to a gentleman who said he was Mr. Gavin Houston. I then enquired if he was related to Mr. W. N. Houston. He said he was his brother. I asked him if Mr. W. N. Houston was employed by Mr. Lamar as——

Mr. MERCER: That you can't state.

(Continuing:) I asked him if he could tell me where I could find Mr. W. N. Houston, and he replied he was dead. I then gave up the search.

Cross-examination by Mr. ERWIN:

Q. You say you understood Mr. Lawson was dead?

A. Yes, sir.

Q. Well, if you knew he was dead why did you go to find him?

A. Because I wished to ascertain further—to get further
192 evidence.

Q. Is it not a fact that when you went to see this Mr. McLeod you did not go to find out whether Mr. Lawson was dead because you understood that, but that you went to see Mr. McLeod to get him to testify.

A. I went first to see him to find out whether he was dead, and then the second time I went to see him to get him to testify.

Q. Now you say when you went to see Mr. Houston, seeing he had a similar name with Mr. Houston who you say was bookkeeper for Mr. Lamar directed you to his address. Now don't you know there are over a hundred Houstons in the New York Directory?

A. I did not look in the New York Directory.

Q. How did you find his name?

A. On a piece of paper among the papers of the estate of G. B. Lamar.

Q. Where is that paper?

A. I did not bring it with me.

Q. Now which Mr. Houston did you find on that paper?

A. I found W. N. Houston, care of Gavin Houston, 42 Bleecker street, New York.

Q. You did not know whether he was dead?

A. I had understood that he was dead, but I was not sure.

Q. Did you not go to find out from Mr. Houston whether he could testify?

193 A. The first time I went to see if I could find Mr. Houston alive; the second time I went and asked if he could testify.

Q. When was that?

A. I can't remember the exact date.

Q. Give us an approximate.

A. It was some time in the spring or summer.

Q. Last spring?

A. Yes, sir.

Q. So far as you know, this man Houston and McLeod are still —?

A. Yes, sir; the last time I saw them was when I took the books to the commissioners.

Q. Now is it not a fact of your own knowledge you don't know that a man by the name of Lawson ever kept Mr. G. B. Lamar's books.

A. I have given all the testimony I know on that subject, and that is that I have seen affidavits——

Q. Now where are the affidavits?

A. As I say, they purported to be affidavits signed by notaries public.

Q. Where are they?

A. I have not them.

Q. Are they in New York?

A. No, sir; in Savannah.

Q. And that is the only thing you know—what the affidavits say?

A. That and memoranda that I found in the safes of the estate of G. B. Lamar.

Q. Where are the memoranda?

A. I did not bring them.

Q. You don't know any more about it than that?

194 A. No, sir.

Redirect:

Q. Will you look at that paper (handing witness paper) and see if you recognize it?

A. Yes, sir; I recognize it.

Q. What custody did it come from?

A. I found it among the papers of the estate of G. B. Lamar.

Q. Do you recognize his signature to it?

A. I do, sir.

Q. What is the date of it?

A. September 6th, 1859.

CHARLES A. BEAMAN, Esq., recalled for complainants:

Q. Will you look at those papers you have in your hand and say where they came from?

A. The papers that I have in my hand—one of them is a paper dated Savannah, 3rd February, 1860, purporting to be signed by G. B. Lamar, W. W. Cheever, and C. A. L. Lamar; the other is a paper dated Savannah, April 30th, 1864, purporting to be addressed

to George H. Cheever, purporting to be signed by C. A. L. Lamar. These papers I received from the attorney, Mr. Crowell, in the suit of the Administrator of Cheever *vs.* Mr. G. B. Lamar, in New York. I received from him the second papers. One of the papers, the one signed or purported to be signed by the three gentlemen,
195 was offered in evidence in the case as to which I testified yesterday and bears the mark of the referee in that case.

Q. Mr. Beaman, in the connection in which Mr. Jones testified just now, will you state to the court whether or not you ever met the former book-keepers of Mr. G. B. Lamar—Mr. Lawson and Mr. Houston?

A. In the matters in which I testified yesterday or day before, I became acquainted with two gentlemen—one by the name of Lawson and one by the name of Houston. Mr. De Rosett Lamar was then alive, and these two gentlemen were often at my office poring over these books that we have here, and testified in these litigations—testified that they had been the book-keepers of Mr. Lamar. I had no personal knowledge of any relation that they were book-keepers, and never knew them, of course, until 1872.

Q. Did or did not they testify in the capacity of book-keepers?

A. They did testify and identified these books of account.

Q. What time was that?

A. I think it began with the year 1875 or '76.

Cross-examination by Mr. ERWIN:

Q. Was Mrs. Lamar a party to that suit?

A. I have no doubt that she was not a party to that suit.

Q. You say these gentlemen were testifying officially?

196 A. They were not testifying officially; they were called as witnesses and asked if they were book-keepers, or to that effect, and so sworn.

Q. Capt. Mercer asked you if the- testified as book-keepers, and I only asked to see if they testified as any other witnesses. As a matter of fact, by looking at them you could not tell whether they were book-keepers or not?

A. No; I could not tell.

Q. As a matter of fact, all you know about it is what they testified in that case?

A. I know about them from what they testified in that case and from what the court found they were.

Mr. MERCER: We offer these three papers to show that Mr. Lamar was engaged in business and doing business with his son at the time these papers bear date.

The COURT: They can go in the record as ruled out by the court.

This stenographic brief of the oral evidence & proceedings upon the trial is correct as far as it goes, & is ordered filed as containing a brief of the oral evidence. Other evidence of a documentary character was offered & elaborate arguments heard in conclusion, & the court, taking time to consider, rendered a decision & opinion

upon the case as presented; which decision & opinion will be placed in the record by order of the court.

EMORY SPEER, *Judge.*

197 *Extract from G. B. Lamar's Journal.*

Last Journal, page 57.

SAVANNAH, *March 9th*, 1868.

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9th entry, 120–58.

The Bank — Republic to estate of C. A. L. Lamar for the bond and mortgage of Mrs. C. A. Lamar, adm'x of said estate, given by authority of a decree of the Chatham superior court to said bank in lieu of my mortgage of January, 1861, to be credited from seventeenth day of March, 1868, to my credit for $80,000.

Endorsement: Extract from the book which was produced in court by Frank C. Jones, ad'r, as the journal of G. B. Lamar, carefully compared and found to be a true copy of the entry in said book, offered in evidence by complainants. Marion Erwin, deputy clerk.

C. A. Lamar.

1863.				1863.			
	From	462			By am—		
		461				461	
Dec. 31	Am't from page	*[462]	552,140 55		By am't from page	462	491,853 92
" "	To C. S. taxes	483	3,904 59	Dec. 31	By sundries	484	37,550 80
" "	" cotton with W. W. C.	484	5,164	" "	" cotton with him	485	30,174 42
1864.				1864.			
Jan'y —	" Rust & Meagher	491	465	Jan. —	" Bank Commerce	492	94 37
"	" cash	493	4 50	"	" do.	"	380 70
			x out.	"	" press (rope)	493	935 46
"	" bills receivable returned	494	2,543 50	Feb. —	" I. & E. stock	494	13,700
Feb. —	" Bank Commerce	498	795	"	" Mr. Fowle & self	500	46,666 66
"	" cash	499	3 65	"	" Lancaster & Co.	501	127,446 66
"	" H. expenses	"	75 00	"	" I. & E. Company	"	318 61
"	" Lancaster & Co.	501	637 23	Mar. —	" sundries	504	16,929 33
Mar. —	" Bank Commerce	506	86 02	July 9	" bills payable	525	21,000
"	" corn	507	400 00	"	" cash	"	333 34
"	" Bank Commerce	509	65,861 75	Sept. —	" I. & E. Company	532	20,000 (‡)
"	" sundries	511	21,500 (†)	"	" Bank Commerce	534	124 25
"	" guano %	512	73,430 13	"	" salt works, S. Merritt	421	40
" "	" D. Timberlake	514	538 40	"	" Gro. Wy. notes, C. A. L.	532	12,075 71
May "	" do.	517	984 80	"	" rough rice	534	1,321 50
" "	" cash	519	24	Dec. 1	" sundries	544	40,826 83
" "	" H. expenses	520	500	" 1	" balance due in currency of 1861		65,089 76
June 1	" I. & E. stock	"	13,000		" balance in C. S. treasury notes transferred to page	473	106,569 42
"	" I. & E. Company	518	20,000 (‡)				
"	" bills payable	519	21,000				
"	" cash, Brailsford	522	145				
Sept. 10	" cash	531	75,000				
"	" Hattie C. Lamar	532	12,900				
"	" L. M. Lamar	"	256				
Dec. 1	sundries	541	90,073 32				
			981,431 74				981,431 74

1864.				1864.			
Dec. 1	To balance Jan., 1862		65,089 76	Nov. 1	By rent—see 473	540	
"	cotton, H. Lafone, 6,010.79	552	6,010 79	Dec. 20	" sundries	545	11,368
				" "	" A. Backer, C. S. T. N. (473).		
				1865.			
				Aug. 15	" U. States	549	
				1866.			
				Jan'y 3	" Gibbs, Bright & Co., £1,026 17s. 11	554	4,563 98
				Ap'l —	" bal. to new ledger	58	55,768 55
			71,100 55				71,100 55

*[Figures in brackets erased in copy.] †[In red ink in copy:] 20 M. ‡[In red ink in copy:] Entry.

201 Endorsement: Extract from the book which was produced in court by Frank C. Jones, adm'r, as the first ledger of G. B. Lamar, carefully compared and found to be a true copy of the page in said book which was offered in evidence by the complainants. Marion Erwin, deputy clerk.

Estate of C. A. L. Lamar. U. S. currency.

1866.					1866.			
April —	To bal. from old ledger in currency of				April —	By amount from old ledger	474	11,368 00
	1861	474	65,089 76			" Gibbs, Bright & Co., £1,026 17 11.		
	sterling ex. J. C.	552				J. C., 545	554	4,563 98
	" cotton & Lafoie, sterling	{444	} 6,010 76			" United States J. C.	549	
		{444			July 15	" Williams & Guion, U. S. C.	25	71 48
1867.					" "	" " U. S. C.	"	39 04
Apr. 4	" cash	15	134 90		Nov. 1	" guano j't % rent	33	6,600
1865.					1867.			
Aug. 29	" do.	27	55 75		March 16	" Thos. A. Hamilton	36	69 24
1868.					Apr. 4	" cash	14	1,500 00
Jan'y —	" do.	35	9		1866.			
March 11	" do.	39	24		Oct. 6	" Thos. A. Hamilton	52	528 00
1869.					1867.			
May 22	" do.	64	20 25		Nov. 6	" guano j't % rent	53	1,700
" 31	" do.	67	51 50		1868.			
1874.					Feb. 25	" cash	36	500
Jan'y 2	" Soutter & Co.	158	25		" 29	" do.	36	500
" "	" guano j't %, gold	157	151,577 98		1868.			
Ap'l 14	" Soutter & Co.	164	12,000 00			" Bank Republic	57	80,000
May 14	" cotton, W. W. C. & C. A. L. L.	170	803		July 1	" guano j't % rent	70	1,700
" "	" "	170	154 27		1869.			
1876.					Feb. 8	" bills receivable May 14	85	763 72
April 20	" sundries, 3.	178	933 34		Mar. 2	" guano j't % rent in full	86	133 34
May 3	" Jno. Cunningham, adm.	179	2,486 64		June 1	" cash	66	71 75
"	" sundries	"	194,583 56		1872.			
"	" do.	180	1,076 87		Sept. 20	" Soutter & Co.	144	275
"	" interest	"	24 51		1874.			
"	" sundries	"	508 12		Apr. 15	" D. A. Martin	160	3,900 46
"	" interest		9,424 37		" "	" Soutter & Co.	163	6,000
					" "	" United States, 32 B.	165	5,610 56
					" 30	" cotton with W. W. C.	166	6,492

					May	14	" cotton, W. W. C. & C. A. L. L.	169	99,127 70 *6
					"	"	" do.	170	5,106 17
					"	"	" guano, cotton	170	401 09
					"	"	" flour mill	167	50 00
					1876.				
					May	3	" cotton, W. W. C., C. A. L. L., & Capt. Freeborn	179	2,897 98
					"	"	" do. with C. A. L. L.	179	14,520 11
					"	"	" interest	"	89,995 56
					"	3	" profit & loss %	"	45 00
					"	"	" interest	178	211 82
					"	"	" sundries	180	1,070 91
					1876.				
					July	1	" balance forward	------	99,180 71
				444,993 61					444,993 61
1876.									
July	1	To balance	------	99,180 71					

[* In red ink over figure 7, which is erased in copy.]

199 Endorsement: Extract from the book which was produced in court by Frank C. Jones, adm'r, as the last ledger of G. B. Lamar, carefully compared and found to be a true copy of the page in said book which was offered in evidence by complainants. Marion Erwin, deputy clerk.

202 *Letters.*

MORRISTOWN, N. J., *Sept. 26th*, 1870.

DEAR FATHER: Wade and Wetter applied for the presses and were asked $12,000.00 a year. I judge they have declined and withdrawn application, for a letter just received from Gas says:

"There is one more chance to lease, viz: Put up the property at public outcry on 1st Tuesday in October. Shall it be one to 5 years?"

I am going this afternoon to telegraph him in reply as follows:

"Try public outcry, lease from one to three years."

Do you think I have done right? I feel so miserably depressed and oppressed about paying off the mortgage that, increasingly v-uable as the property must become, I feel sometimes as if it would be best to sell and relieve myself of the horrid burden. Can you not interest some of your capitalist acquaintances in the matter and persuade them either to buy or lease? Gas' lease will be up on the 1st Oct. Suppose outcry does not succeed, what must I do? I do not feel as if I could run it again myself, after my first trial's proving such a failure. Are you following up Judge Magrath about the Baldwin suit?

203 I was glad to hear from the girls that you were looking so well. We are all well and Caro. has gained nine pounds in the last five weeks. This climate certainly agrees with her, and she is urging me to leave her here for the winter to attend a capital home school, the principals of which, two lovely maiden ladies, boarded in the same house with us at Amagansett. The cost of her tuition in English, French, and music will be less than at home, and her board and washing at Mrs. Gordon Howard's, who will be a kind friend and mother to her, will not be thirty dollars per month. Dr. Schley thinks a winter in this dry, bracing mountain air will strengthen her and eradicate her bronchial tendencies. What would you advise me to do? I hope Hattie keeps well. Give our love to her, and, with love from all to you, believe me, as ever,

Your afft. daughter, C. A. LAMAR.

P. S.—Direct to me at "The Duncan house," Morristown, N. J. When are you going home? I hope to go from here by land about 25th October.

204 SAVANNAH, *Ap'l* 12, 1866.

Mrs. Caroline A. Lamar, adm'x estate C. A. L. Lamar.

DEAR CARO.: Annexed and enclosed I present my accounts, as far as adjusted, with the estate of C. A. L. Lamar, of which you are administratrix.

The one in gold currency was for various advances before the war	$65,089 76
& loss on guano (estimated at)	60,000
& his part, 1,390 bales cotton burnt at Montgomery, in sterling	6,019 79
	$131,100 55

The ac. in C. S. currency is for items ascertained	$245,685 95	
The other items are estimated at	50,000	
		295,685 50
		$426,786 50

I am, &c., G. B. LAMAR.

Estate of C. A. L. Lamar to G. B. Lamar, Dr.

1864.			
Dec. 1.	To balance of old account, in gold currency, before the war, as rendered		$65,089 76
	half the loss on guano purchased & sold & on the notes not paid, for which it was sold in 1860 & 1861, not yet ascertained		
	half loss on his & my part of 1,390 bales cotton, jt. ac. with H. Lafone, which were burnt at Montgomery, Ala., in sterling		6,010 79

205 Estate of C. A. L. Lamar to G. B. Lamar, Dr.

1864.			
Dec. 1.	To balance jt. ac. rendered, in currency, advanced from 1862 @ 1864, inc.		$106,569 42
	To half loss on cotton bonds		71,393 40
	To half cost of cotton on jt. ac. with him, which has been taken by the United States		67,723 13
			245,685 95
	To half loss on cotton bought for jt. ac. with C. A. L. Lamar and W. W. Cheever, not yet adjusted, cotton taken by the U. States military and held by them		
	To advance to W. W. Cheever for buying cotton on jt. ac. which were not invested, not yet fully ascertained		

Besides interest on the items.

These acs. — entitled to some credits not yet fully ascertained, among which the principal item is profits on tobacco, $23,008.21 in C. S. currency.

206 SAVANNAH, *April 30th*, 1864.

George H. Cheevers, Esq., Savannah.

DEAR SIR: I understand that you have taken out letters of administration on the estate of your brother, William W. Cheever. I hold two notes of his, one dates January 1st, 1858, for $5,000; the other, for $2,086.83, dated October 1st, 1859. I sent him $30,000 a year ago last March to purchase cotton on joint account. He purchased 300 bal., subsequently sold 50, and I can find but 85 of the remainder; he therefore owes me the one-half of the balance, with

the cost, as I furnished all the money. I'll show you all the correspondence on the subject. My father informs me that General Jackson told him he had seen a paper signed by me to the effect that William was in no way to be responsible for any loss made upon the guano. The General is mistaken; at any rate I'll bet him $5,000 'tain't so. I was let into the (transaction) contract some three months after by William and my father. If you will call and see me I will be glad to show you all the papers, etc., etc.

Yours, etc., C. A. L. LAMAR.

Addressed on the back of the letter to Capt. George H. Cheever, Savannah, Ga.

207 Office American Guano Company, 66 William Street, Corner Ceder.

NEW YORK, *September 6th*, 1859.

Messrs. G. B. Lamar and William H. Cheever.

GENTLEMEN: In consideration of the valuable services you have it in your power to render this company by using your position and influence in rapidly forwarding the introduction of American guano into the Southern market, we are induced to offer you the agency for the sale of American guano in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, and Tennessee, on the following terms and conditions: The term of said agency to be ten (10) years, during which time we will sell you whatever guano you may require, to an extent not exceeding one hundred thousand (100,000) tons, and which we may have to deliver at the lowest price at which we may be selling by the cargo, which at the present time is thirty dollars ($30.00) per ton of 2,240 pounds; said guano to be from Jarvis or Baker's islands or any other islands which we may hereafter discover and control. You are to receive said guano at New York or at Hampton Roads; in the last case subject to our charter parties. When full cargoes are required they are to be ordered direct to Charleston or Savannah, when timely notice
208 is given to that effect. If the company ob*ob*tains the control of the guano coming to William H. Webb or other parties from our islands, such of it as may be required for said States will be included in this contract. You are to advance in cash one-half the market price by the cargo of such guano, receiving the guano in bulk, and you will be allowed interest on such advances until reimbursed by sales; the bags to be provided by yourselves, and the market price of the same in New York (such as the company may at the time be using) to be deducted from the price of the guano; the company to have the privilege of selling to dealers and others in the above States, but in all instances when the company realises in sales to said States any sum over the price by the cargo, such sum shall be credited to you and the amount of guano thus sold at a privation to you shall be deducted from your privilege of one hundred thousand tons. All guano sold by you under this contract

shall be considered as cash and be so accounted for to the company, and accounts sales shall be rendered every sixty (60) days.

C. S. MARSHALL,
Pres't Am. Guano Co.

It is distinctly understood and agreed that the American Guano Company will not establish any other agencies in the above-named six States during the continuance of this agreement. It is also understood and agreed that in case the 10,000 tons of guano, as above, should be sold in less than ten years, then this agreement will terminate.

C. S. MARSHAL,
Pres't American Guano —.
G. B. LAMAR.
W. W. CHEEVER.

209 Mr. W. W. Cheever to be one-third interested in the sale of all the guano sold by C. A. L. Lamar in Savannah, especially in the cargo of ship Argo and 100 tons of Peruvian now being sold, or in any to be acquired hereafter, except from American Guano Company, to be subject of future agreement.

G. B. LAMAR.
W. W. CHEEVER.
C. A. L. LAMAR.

Savannah, 3rd February, 1860.

SAVANNAH, *Dec. 4th*, 1866.

MY DEAR FATHER: I know that you will rejoice with me when I tell you that one for whom our anxieties were enlisted, lest she should be diverted, by the allurements of Parisian life, from her search after holiness, has remained steadfast, and that on last Saturday night the name of Jane Creswell Lamar was added to the roll of membership of our church. Pray for her, dear father, that she may fight the good fight and, persevering to the end, may win the crown. And what else of much value is there here for us to live for? Our props are taken, our idols crushed, and "passing away" is written on all earthly things.

I am grieved to learn that your cotton case continues in such an undecided, unsatisfactory condition, and hope, though with
210 fear and trembling, that all the trouble, expense, and sacrifice it costs you may be met with that reward we so much desire. I pray constantly that you may be guarded from further insult and injury, and that the cotton or its equivelent may be restored to us, for the indebtedness of dear Charlie's estate to you broods like a horrid nightmare over me, and I would like, during your lifetime, to have all things settled between us, for I know you love us not only for ourselves, but for the sake of that noble son who was so precious in your eyes.

Annie is preparing for her marriage on the 12th, and she and Jane and Eliza are in great excitement preparatory to the event. With love to you from each and all, I am

Your afft. daughter, CARO. A. L.

SAVANNAH, *July 16th*, 1874.

MY DEAR FATHER: In your last letter to me, dated May 8th, you say, speaking of our debt to the Bank of Republic, "I shall take a transfer of that mortgage and hold it as my own until all the cotton suits and lawsuits are settled." Three weeks ago I wrote to ask if you had taken the transfer of the mortgage or whether the bank still held it, and not one word have I had in reply.

I also prof-erred a request for Miss Hayman, who selected
211 me as the medium of conveying it to you, vis., that in the events of your death and Taylor's she begged that Hattie's and Bonny's property should be left in charge of some lawyer of honor and integrity and not with any member of the family. She told me that several letters she had written you had never reached you, and, from your silence, I fear you never received my last letter, written, as above stated, three weeks ago.

The $6,000.00 I sent to you for Baldwin, together with the taxes and repairs of the wharves and presses, has consumed all the rent, and it has been impossible for me to send any to the bank. The expenses on the presses and the wharves have this year been considerably over $4,000.00; State and county taxes for last year, paid Jan. 15th, 1874, $914.94, and the city taxes, instead of being $512.25 a quarter, as they were last year, are $614.70 a quarter, and I have paid up to 1st of this month. Thus you see, dear father, how the money goes, and "a feeling of sadness comes o'er me" when this handsome rental comes in that my children derive no benefit therefrom except in honestly paying what their father owed; but honor is as dear to me as life, and I would scorn any lack of principle in myself or in them.

The wharf on the canal side has been thoroughly fixed. Now the river front is bulging out and has to be repaired, and the severe storm of the 5th inst. blew away portions of the tin roofing,
212 and that is now being renewed. Charlie Cunningham has leased the property at $18,000.00 for the next year, and I pray he may pro-per in running them and they may prosper in his hands.

Why will you never tell me anything about Derry? I ask you in every letter and you never name him. Do you not know that he is very dear to me? How are all, and has Charlotte gone to Europe?

Who is Capt. Martin, now residing on the eastern —of Maryland? He told Frank Buchanen that he had lately received from you either $80,000.00 or 180,000.00 for his share of the cotton money. Is he the man who tried to steal the Wanderer? By the way, George Mercer got some money out of Hone, none of which has been paid me, but out of it he took $500.00 as a retainer fee for being counsel for our estate—another enormous charge, I think.

Rebecca Poulain is threatened with epilepsy, and will leave with her mother for N. Y. in Saturday's steamer to consult Dr. Hammond, who cured Sallie Schley. All well but C. Cunningham, who is threatened with inflam-ation of the stomach. Love from and to all.

Your- aff't'ly, C. A. LAMAR.

213 48 BROUGHTON STREET,
SAVANNAH, GEO., *May 23rd*, 1881.

Mortgage on wharf, &c.

MY DEAR DERRY: I recently sold a portion of the land owned by the estate of my husband in the eastern portion of this city, and on my having the title made out found to my surprise that there was a mortgage on it, I believing that only the presses and the warehouse were thus mortgaged.

It is the mortgage assumed by me for my husband's and your father's joint and equal indebtedness to the Bank of the Republic for monies borrowed on account of a guano speculation.

As the presses and warehouse are said to be worth over $100,000.00 and the mortgage was then taken up, about $64,000.00, it is amply secured by the presses and the warehouse, and I write to ask if you will not, as executor, relinquish the lands from the mortgage.

We desire very much to realize something from this property, and as we do not think it will affect the interest of the estate you represent and the prices obtained is to our interest to accept, we hope you can and will do what I ask. Please let me hear from you at once, that I may know what to report to the purchaser.

All well, but in distress at the tidings, which reached us last
214 Friday, of the sudden death, in Glasgow, Scotland, of my dear and beautiful sister-in-law, Mrs. Parker Nicoll.

Love from all of us.

Your afft. sister, CAROLINE A. LAMAR.

Commission to Examine Witnesses Donald W. McLeod, G. Houston, and Frank C. Jones for Complainants.

215 UNITED STATES OF AMERICA, }
Southern District of Georgia. }

In the Circuit Court of the United States for the Southern District of Georgia.

To Gherardi Davis, 32 Liberty street, New York, or Thomas Hunt, 40 Pine street, New York, and Henry C. De Witt, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhib-ed to you in a certain cause pending and to be tried in the said court, to wit, Harriet C. Jones and Frank C. Jones, adm's of G. B. Lamar, *versus* Caroline A. Lamar *et al.*, as well on the part of the said plaintiffs as on the part of the said defendants or either of *him*.

And it is required of you (or any two or more of you) that, on certain days and at certain places by you to be appointed for that purpose, you do cause the said Donald W. MacLeod, G. Houston, and Frank C. Jones, all of New York city, witnesses on the part of the

complainants, to come before you and then and there examine upon the said interrogatories, their corporal oaths first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such examination and reduce into writing, and when
216 you shall have taken you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition of depositions of witnesses to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or severally, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this sixth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and the one hundred and twelfth
217 year of American Independence.

[Seal U. S. Circuit Court.]

S. F. B. GILLESPIE,
Deputy Clerk.

SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and with- partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

Subscribed and sworn to before me this 19th day of October, A. D. 1887.

HENRY C. DE WITT,
GHERARDI DAVIS,
Commissioners.

The Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause take *the* and write down, transcribe,
218 and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of the said court, so help *me* God.

LORING WATSON.

Subscribed and sworn to before me this 22nd day of October, A. D. 1887.

GHERARDI DAVIS,
Commissioner.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, Adm'rs Estate G. B. Lamar, Compl'ts, and CAROLINE A. LAMAR *et al.*, Defend'ts. } In Equity.

Interrogatories to be addressed to Donald W. MacLeod, G. Houston, Frank Cazenove Jones, material witnesses for complain-
219 ants in the above cause, and who reside out of the State of Georgia and in the city and State of New York.

To Donald W. McLeod:

1st. Do you know the parties to the above suit? Where do you now reside and what is your present occupation?

2nd. Did you ever know Adam S. Lawson? And, if yes, state whether or not he was ever in your employ, and when and where.

3rd. Is the said Adam S. Lawson now living or is he dead? And if dead, state the time, place, and circumstances of his death and the sources of your knowledge of the same.

4th. What was the profession or occupation of the said Adam S. Lawson? And if you say he was a book-keeper, please state whether or not, to your knowledge, he was ever in the employ of Gazaway

B. Lamar, who resided in New York just prior to the late war, and during said war in Savannah, Georgia, or ever kept books for said Lamar. If you reply in the affirmative, please state the facts and circumstances as fully as you can.

5th. Are you or not acquainted with the signature and handwriting of said Adam S. Lawson and can you or not recognize the same? If you can, look at any books or papers produced to you by the commissioners and say whether or not you see any entries ther-in
220 in the handwriting of said Lawson; i- yes, identify the books or documents so produced by names, numbers, dates, &c., and state particularly whether or not they are books of original entries and the nature and character of such entries.

6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issu- in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause; if yes, set forth the same fully and at large in your answer.

To G. Houston:

1st. Do you know the parties to the above suit? Where do you now reside and what is your present occupation?

2nd. Did you ever know R. H. Houston? And, if you —, state when and where.

3rd. Is the said R. N. Houston now living or is he dead? And if dead, state the time, place, and circumstances of his death and the sources of your knowledge of the same.

4th. What was the profession or occupation of the said R. N. Houston? And if you say he was a book-keeper, please state whether or not, to your knowledge, he was ever in the employ of the late Gazaway B. Lamar, who resided in New York just prior to the late war, and during said war in Savannah, Georgia, or ever kept
221 books for said Lamar. If you reply in the affirmative, please state the facts and circumstances as fully as you can.

5th. Are you or not acquainted with the signature and handwriting of the said R. H. Houston and can you or not recognize the same? If you can, look at any books or any papers produced to you by the commissioner and say whether or not you see any entries therein in the handwriting of said R. N. Houston. If yes, identify the books or documents so produced by names, numbers, dates, &c., and state particularly whether or not they are books of original entry and the nature and character of such entries.

6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

To Frank Cazenove Jones:

1st. Do you know the parties to the above suit? Where do you now reside and what is your present occupation?

3nd. Have you the possession and control of the mercantile and

other books and of the documents and papers of the late Gazaway B. Lamar; and, if yes, when did you acquire possession of them?

222 3rd. Have you ever made a search of said books and papers to see whether or not you could find among them a certain bond and mortgage to secure the same for $164,000.00, conditioned for the payment of $82,000.00 or other large amount, given by said Gazaway B. Lamar on or about January fourteenth, A. D. 1861, to himself as president of the Bank of the Republic of New York? If you made such search, state when and where you made it and the nature and character of the same. Could you or not find said bond and mortgage or either or any traces of the same? Do you know what become of said papers or whether the same can now be found?

4th. Do you or not know whether Adam S. Lawson and R. N. Houston or either were ever employed as book-keepers by said Gazaway B. Lamar and whether or not they made entries as such in his books?

5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

GEORGE A. MERCER,
H. R. JACKSON,
Solicitors for Compl'ts.

223 Defendants object to that part of interrogatories numbered five, addressed to G. Houston and Donald W. McLeod, which interrogates them as to the handwriting of entries in books and as to whether the books are books of original entry and the value and character of such entries, on the ground that said questions do not specify or describe the books and entries. In the absence of such information, defendants are unable to propound cross-interrogatories to these witnesses.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Def'ts' Sol'rs.

Due and legal service acknowledged; filing, time, copy, and notice waived. Let commission to take the testimony issue at once, directed to Gherardi Davas, 32 Liberty St., New York, on behalf of complainants. Defendants nominate Henry C. De Witt to act as commissioner.

F. G. DU BIGNON,
LAWTON AND CUNNINGHAM,
CHISHOLM & ERWIN, *Def'ts' Sol'rs.*

Oct. 5th, 1887.

Filed Oct. 6th, 1887.

S. F. B. GILLISPIE,
Deputy Clerk.

224 *Answers.*

Examination and deposition- of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the eastern division of the southern district of Georgia, taken and reduced to writing at the city of New York this 22nd day of October, 1887.

GAVIN HOUSTON, aged fifty years, being duly sworn, answers and deposes unto the direct interrogatories annexed as follow-, to wit:

To the first direct interrogatory the witness, answering, saith: I do not know the parties personally. I reside in Maplewood, N. J. I am agent for Thomas Nelson & Sons, of Edinburgh, Scotland.

To the 2nd direct interrogatory he saith: Yes, I knew him. He was my brother; first in Scotland and then here.

To the 3rd direct interrogatory he saith: He is dead. He died of pneumonia, in Roosevelt hospital, New York, April 23rd, 1880. I saw his corpse.

To the 4th direct interrogatory he saith: He was a book-keeper. He was a book-keeper for G. B. Lamar. His residence I am not possitive of, but my brother kept books for him in New York city.

225 To the 5th direct interrogatory he saith: I am and can whenever I see it. If books are produced in his handwriting, I can and will identify it.

To the sixth direct interrogatory he saith: I cannot.

GAVIN HOUSTON.

Subscribed and sworn to this 22nd day of October, 1887, before us—

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

DONALD W. MACLEOD, aged forty-eight years, being duly sworn, answers and deposes unto the direct interrogatories annexed as follows, to wit:

To the first direct interrogatory the witness, answering, saith: I do not know the parties to my knowledge. I now riside at 181 Garfield place, Brooklyn, N. Y. My present occupation is importer, at 293 Church street, New York.

To the second direct interrogatory he saith: Yes; he was in my employ at my store on Church street; I think in 1878, 1879, and par- of 1880.

To the 3rd direct interrogatory he saith: He is dead; he died in June, 1880, in Broadway, New York city, in a hotel near 8th street. I saw his body after his death, and attended his funeral. He was found dead in his bed, and I think there was a coroner's inquest.

226 To the 4th direct interrogatory he saith: Book-keeper. I only know that he told me he had been employed by G. B. Lamar, whose residence I do not know. He told me he went to Savannah to keep Mr. Lamar's books.

To the 5th direct interrogatory he saith: I could identify his handwriting, as I am familiar with it.

To the 6th direct interrogatory he saith: I don't know anything about the case.

DONALD W. MACLEOD.

Subscribed and sworn to this 22nd day of October, 1887, before us—

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

Adjourned to Oct. 27th, 10 a. m.

DONALD MACLEOD, recalled and further answering interrogatory 5th, says, a journal being shown marked "Exhibit D, July 7th, 1877, W. G. C.":

I see and recognize in the book the handwriting of Adam S. Lawson—the entries on pages 1 to 24. On page 5 I recognize an account as follows:

55. To by cotton, with A. A. Cheever & C. A. L. Lamar	C. S. C. $165,535 78	
	472 28	U. S. C.
	$165,063 50	
61. To by guano, u. ac. with C. A. L. Lamar	117,058 69	

227 I don't know whether these are original entries, but, as a matter of book-keeping, this is a book of original entry.

(A ledger marked "B, July 7, 1877, W. G. C.," shown.)

On page 58 & on page 55 I recognize certain entries in Lawson's handwriting. On page 55, from April 12th, 1866, down to June 11th, 1866; on page 58, an entry of April, 1866.

"Balance from old ledger, 474, in currency of 1861, $65,089.76." This item I see is posted from the journal & the other ledger.

(A second ledger, marked "A, July 7th, 1877, W. G. C.," shown.)

On page 471 I recognize as Mr. Lawson's handwriting the entry of June 4th, 1863. I also recognize his handwriting in other places in same book. According to my judgement, there are books of original entry; whether they are copied from other books or papers I cannot say.

(A second journal, marked "Q, March 23, 1878, W. G. C.," shown.)

On page 165 the entry on page headed with Sept. 3rd, 1863, about the centre of the page marked in the margin 456, is in Lawson's handwriting.

(A day book marked "3, March, 23rd, 1878, W. G. C.," shown.)

On page- 2, 3, & others there is an original note in his handwriting. On page 2, "new journal, 4, and old journal, 555."

228 (A journal marked "1, March 23rd, 1878, W. G. C.," shown.)

On page 100 the entry of July 1st, 1874, also other entries, I recognize as his handwriting.

(A cash book marked "C, July 7th, 1877, W. G. C.," shown.)

On page 441 the entry page is in his handwriting.

In all these books I see his handwriting in many places besides those specified.

These books appear to be the original set or books belonging to that set.

I do not know anything about the — and character of these accounts, except as they appear to be accounts between G. B. Lamar, C. A. L. Lamar, W. W. Cheever, and others.

DONALD W. MACLEOD.

Answered, subscribed, and sworn to before us this 27th day of October, 1887.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

FRANK CAZENOVE JONES, aged 30 years, being duly sworn, deposes and answers unto the annexed direct interrogatories:

To the first: I know plaintiffs, but not defendants; reside at 222 West 23rd St.; by occupation am a manufacturer.

229 & to the second: I have, & acquired possession of them in the winter of 1886—January or February.

& to the third: I have made such search; made it during the year 1886, in the office of Dickerson & Dickerson, in the two safes belonging to the estate of G. B. Lamar; also in the safes in the vault of the New York Stock Exchange Safe Deposit Co. rented to the estate of G. B. Lamar, and in the desk and among the papers of the late executor, G. De Rosett Lamar.

I could not find either the bond or mortgage or any traces of it. I don't know what became of it or where they can be found.

& to the fourth: Of my personal knowledge I never knew either Adam S. Lawson or R. N. Houston, but from what I have learned from the late executor & entries in the books specifying money paid to them for book-keeping, I can say on information and belief they were his book-keepers. I believe they made the entries in the books. The handwriting of Lawson has been identified to me and I recognize the handwriting of Houston from his signatures in my possession. I furnished the books to the commissioners for identification.

230 And to the fifth: My knowledge is derived from the books which have been submitted. A careful examination of the books show- and convinces me that the defendants owe the plaintiffs a large sum of money in addition to the mortgage which the plaintiffs are seeking to foreclose, especially set forth on page 58 of ledger marked "B, July 7th, 1877, W. G. C.," the entries appearing to be in the handwriting of Adam S. Lawson, R. N. Houston, & G. B. Lamar.

FRANK CAZENOVE JONES.

Answered, subscribed, sworn to before us this 27th day of October, 1887.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

GAVIN HOUSTON recalled, further answering interrogatory fifth:

Ledger marked "B, July 7th, 1877, W. G. C.," shown witness.

I see entries on several pages in handwriting of the late R. N. Houston, especially on page 58, commencing on the debit side with the entry of April 20th, 1876, and May 3rd, 1876; also, on the credit side, May 3rd, 1876. This is apparently an account between the estate of C. A. L. Lamar, U. S. currency, and the owner of this set of books.

NOTE.—The words G. B. Lamar and others are marked off
231 immediately after the word Lamar and before the words U. S. currency, and are marked by the initials H. C. D. on the margin.

Journal marked Exhibit D, July 7th, 1877, W. G. C., shown.

I recognize on page- 178, 179, 180 entries in the handwriting of R. N. Houston; the item on page 179, the 6th entry, viz:

"Profit & loss, &c.

To estate C. A. L. Lamar, C. S. currency ---- ------- $26,350 10"

A book endorsed sales book shown witness and marked Exhibit A, Oct. 27th, 1887.

This book is in the handwriting of R. N. Houston and appears to be, as set forth on page 186, a transcript or notarial copy of the book marked C, July 7th, 1877, W. G. C.

Book shown witness and marked Exhibit B, Oct. 27th, 1887.

This appears to be a compilation from other books—cash books & journals—of G. B. Lamar. It is in the handwriting of R. N. Houston.

Not knowing how he kept his books, I am unable to state whether these books were books of original entry.

In regard to the nature and character of the entries, I cannot

specify any more than I have done, as I don't know whose books these were.

GAVIN HOUSTON.

Answered, subscribed, and sworn to before us this 27th day of October, 1887.

232 HENRY C. DE WITT,
GHERARDI DAVIS,
Commissioners.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

We, the undersigned commissioners herein, hereby certify that the above depositions were taken by us as stated in the captain and reduced to writing in our presence, and the exhibits used by the witnesses referred to herein were all marked by us with our names and the date of production.

And we further certify each for himself that he is not interested in the cause nor of kin or counsel to either party.

In witness whereof we have hereunto set our hands and seals this 27th day of October, 1887.

[Seal of Commissioners.]

HENRY C. DE WITT,
GHERARDI DAVIS,
Commissioners.

233 *Commission to Examine Witnesses Ed-in F. Corey, Henry W. Ford, and Eugene H. Pullen, for Complainants.*

UNITED STATES OF AMERICA, }
Eastern Division, Southern District of Georgia. }

In the Circuit Court of the United States for the Southern District Georgia.

To Guerardi Davis, 32 Liberty St., New York; Henry C. De Witt, New York, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein Harriet Cazenove Jones and Frank Cazenove Jones, administrators of G. B. Lamar, *et al.* are compl'ts and Caroline A. Lamar *et al.* are defendants, as well on the part of the said complainants as on the part of the said defendants or either of them; and it is required of you (or any two or more of you) that, *on* certain places and on certain days by you to be appointed for that
234 purpose, you do cause the said Ed-in F. Corey, Henry W. Ford, and Eugene H. Pullen, of New York and residing in this city of New York, witnesses on the part of the complainants, to

come before you, and then and there examine them upon the said interrogatories on their corporal oaths, first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such their examination- and reduce them into writing, and when you shall have so taken them you are to send the same to the clerk of the circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or seals of any two of you), distinctly and plainly set; together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining of any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of the- presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally
235 take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or severally, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-seven, and the one hundred and twelfth year of American Independence.

[Seal of U. S. Circuit Court.]

MARION ERWIN,
Dep. Clerk.

SCHEDULE.

The Commissioners' Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you, and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by
236 virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

Subscribed and sworn to before me this 19th day of October, A. D. 1887.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

The Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause take and write down, transcribe, and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners or any of them named in the commission hereunto annexed so far forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of the said court, so help you God.

LORING WATSON.

237 Subscribed and sworn to before me this 19th day of October, A. D. 1887.

GHERARDI DAVIS,
Commissioner.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, Adm'ors Estate G. B. Lamar, Complainants,
and
CAROLINE A. LAMAR *et al.*, Defendants.

Interrogatories to be addressed to Edwin F. Corey, Henry W. Ford, and Eugene H. Pullen, material witnesses for complainants, who reside out of the State of Georgia and in the State and city of New York.

To Edwin F. Corey:

1st. Please state your residence and occupation in the month of May, 1874, and at present.

2nd. Have you or not any knowledge or recollection of the assignment, on or about May 7th, 1874, by the National Bank of the Republic, of New York, to Gazaway B. Lamar of a certain bond and mortgage executed, on or about March 17th, 1868, by Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, to said bank, and were you or not a witness to said assignment or to any acknowledgement of such assignment?

238 3rd. If you reply in the affirmative, please state in what character you witnessed the same or took any acknowledge-

ment of such assignment? Who were the witnesses to such assignment; were they or not known to you; are they now alive or dead, and do you or not know their signatures?

4th. Please look at said original assignment, if the same is produced to you, and say whether or not it is the identical assignment witnessed or acknowledged by or before you. Please identify, if you can, your own signature and that of the witnesses thereto, and so describe and identify the instrument of assignment that the same can be readily recognized and established in court as the true and genuine original by means of your testimony. If necessary, attach to your answer a copy of said assignment and of the probate thereof.

5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

To Henry W. Ford:

1st. Please state your residence and occupation in the month
239 of May, 1874, and previously thereto and at present.

2nd. If you say that in 1874 you were an officer of the National Bank of the Republic, of New York, please state what office you held and whether or not it came to your knowledge as such that said bank made an assignment to Gazaway B. Lamar of a certain bond and mortgage held by said bank and made and delivered to the same by Caroline A. Lamar, administratrix of Charles A. L. Lamar, on or about March 17th, 1868, to secure eighty thousand dollars or other large amount.

3rd. If you say these facts did come to your knowledge, please state whether or not you were one of the witnesses to the assignment of said bond and mortgage; and, if yes, look at said assignment, if produced to you, and say whether or not you recognize your signature as such witness. Who were the other witnesses? Are they now alive or dead? Is or is not said assignment executed under the corporate and official seal of said bank? and, if yes, say whether or not said seal or the impression of the same on said assignment is genuine.

4th. Do you or not know or now recall, of your own personal knowledge, what was due to said bank by said Caroline A. Lamar, administratrix, upon said bond and mortgage at the date of said assignment and the exact amount paid by said Gazaway B. Lamar
240 for said bond and mortgage and to secure said assignment to himself?

5th. By whom was the amount then due to said bank on said bond and mortgage paid? Who made the payment and from whom did the bank receive the money?

6th. Please state whether or not it came within your knowledge that said bond and mortgage executed to said bank by said Caroline A. Lamar, administratrix, were made and delivered in the place and in lieu of a bond and mortgage executed to the Bank of the Republic, of New York, by said Gazaway B. Lamar on or about

January 14th, 1861, and that said original bond and mortgage were given up when said new bond and mortgage were executed.

7th. Did you or not know of said original bond and mortgage of January 14th, 1861, as the property of said bank? Can you say what became of them after the execution of the new bond and mortgage by Mrs. Lamar in March, 1868? Were they given up or retained by said bank? Can you state where they now are, if in existence?

8th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

241 To Eugene H. Pullen:

1st. Please state your residence and occupation.

2nd. If you say you are an officer of the National Bank of the Republic, of New York, please state what office you hold and how long you have held it.

3rd. Does it or not come within your knowledge, as such officer or otherwise, that on or about January 14th, 1861, Gazaway B. Lamar executed and delivered to himself as president of the National Bank of the Republic, of New York, a bond and mortgage for $164,000.00 to secure $82,000.00 or other large amount, and that said bond & mortgage were replaced by a new bond and mortgage executed to the National Bank of the Republic, of New York, by Caroline A. Lamar, administratrix of Charles A. L. Lamar, on or about March 17th, 1868?

4th. Do you or not know what became of said original bond and mortgage on and after March 17th, 1868? Have you ever seen them or either since said date among the papers of said bank or elsewhere? Do you know where they are at present? Will you please make a search among the papers and documents of said bank and state whether or not they can be found among them?

5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue
242 in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

GEORGE A. MERCER,
Solic. for Compl'ts.

Defendants propound no cross-interrogatories to Edwin F. Corey.

Cross-Interrogatories to be Propounded to Henry W. Ford and Eugene H. Pullen.

1st. Did Gazaway B. Lamar keep a deposit account with the National Bank of the Republic in the year 1874? If you answer that he did, then attach to your answers and let the commissioner *testify* identify, a true and correct transcript from the books of said bank,

showing the amounts deposited to the credit of said G. B. Lamar from January 1st, 1874, to June 1st, 1874, and the amounts drawn by him between the same dates.

2. How was the mortgage paid? If by check or draft, attach a copy of the same if in your possession or control; if not in your possession or control, then describe it fully and particularly,
243 giving the names of drawer, drawee, date, amount, to whom payable, &c.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Def'ts' Sol'rs.

Filed July 29th, 1887.

M. ERWIN,
Dep. Clerk.

Due and legal service of the within interrogatories acknowledged; filing, time, and copy waived. Let commission issue at once.

Def'ts nominate Henry C. De Witt as commissioner and agree that he and a disinterested person to be nominated as commissioner by compl'ts may take the testimony of the witnesses.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
Def'ts' Att'ys.

Complainants nominate Gherardi Davis, Esq., 32 Liberty St., New York.

GEO. A. MERCER,
Solic. for Compl't-.

July 29, 1887.

244 *Answers to Interrogatories for Edwin F. Corey, Henry W. Ford, and Eugene H. Pullen, of New York, Witnesses for Complainants.*

Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, Adm's Estate G. B. Lamar, Complainants, and CAROLINE A. LAMAR *et al.*, Defendants. } In Equity.

Examination and deposition of a witness produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the eastern division of the southern district of Georgia, taken and reduced to writing at the city of New York this 19th day of October, 1887.

HENRY W. FORD, aged over twenty-one years, being duly sworn, answers and deposes unto the annexed direct and cross-interrogatories as follows, to wit:

To the 1st direct interrogatory the witness, answering, saith:

245 I resided at Morristown, N. J., where I still reside, and was cashier of the National Bank of the Republic, in this city.

To the second direct he saith: I knew of the assignment to Gazaway B. Lamar by the National Bank of the Republic of the land and mortgage referred to.

To the third direct he saith: I was a witness to the assignment of the mortgage referred to. I recognize my signature to the document produced as a witness. The other witness was Edwin F. Corey, Jr., who is now alive, I believe. The assignment was executed by the president of the National Bank of the Republic under the corporate seal of said bank, which seal is genuine.

(Assignment produced, marked "A" for identification, October 19, 1887.)

To the fourth direct he saith: By the books of the bank the amount due by Caroline A. Lamar as executrix was eighty thousand dollars; that amount appears by the books of the bank to have been paid on the date the mortgage was cancelled, or about that time. This assignment appears to be for sixty-four thousand and nineteen dollars and eighty-eight cents.

To the fifth direct he saith: It was paid by Gazaway B.
246 Lamar, and the bank received the money.

To the sixth direct he saith: I believe that it was, but I don't know the date of the original mortgage.

To the seventh direct he saith: I believe there was an original bond and mortgage of Gazaway B. Lamar, but what became of it or them after the execution of the new bond I am unable to say; presume the old mortgage was given upon the execution of the new one; whether now in existence I cannot say.

To the eighth direct he saith: That what I have stated is about the extent of my knowledge on the subject.

To the first cross-interrogatory he saith: He did keep an account with the National Bank of the Republic from January 1st to July 1st, 1874, and I produce a copy thereof.

The paper produced is hereto annexed, marked "Exhibit B."

To the second cross-interrogatory he saith: The mortgage was paid for by check of Gazaway B. Lamar on the National Bank of the Republic, dated May 12th, 1874. The check is not to be had, as the same was delivered to Mr. Lamar on the settlement of
247 his account. He paid to the bank May 12th, 1874, the sum of $86,875.27, which appears by the ledger to be one check.

H. W. FORD.

Sworn to this 19th day of October, 1887, before us—

HENRY C. DE WITT,
GHERARDI DAVIS, *Comm's.*

Adjourned to October 20th, 1887, at 10 a. m.

EUGENE H. PULLEN, aged fifty-seven years, being duly sworn, deposes and answers unto the annexed and cross-interrogatories as follows, to wit:

To the 1st direct interrogatery the witness, answering, saith: My residence is Brooklyn, N. Y., and occupation, cashier of the National Bank of the Republic, of New York.

To the second direct he saith: I am cashier, and have been since January 31st, 1879.

To the third direct he saith: I have no knowledge whatsoever.

To the fourth direct he saith: I never saw them. I don't know what became of them. I have made a search and know they are not in the bank now.

248 To the fifth direct he saith: I have no knowledge of the matter whatsoever.

To the first cross-interrogatory he saith: According to the ledger, he did.

Exhibit B shown witness and identified by him.

Witness says: That is a true transcript from the books prepared by me.

To the second cross-interrogatory he saith: I do not know how it was paid, except that it appears on the face of the ledger to be paid, and it does not appear as an asset of the bank. I know of no check or draft. That would have been returned to the drawer on settlement.

E. H. PULLEN.

Subscribed and sworn to this 20th day of October, 1887, before us—

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

N. Y., *October* 22*nd*, 1887.

Adjourned to October 27th, 1887.

249 G. B. Lamar:

		Dr.	Cr.
April 15.	By cash		100,000
May 12.	To cash	86,875 27	
Nov. 17.	To do.	13,124 73	
		100,000	100,000

Exhibit B produced before the commissioners in the suit of Harriet Cazenove Jones & others *vs.* Caroline A. Lamar & others October 19th, 1887.

HENRY C. DE WITT,
GHERARDI DAVIS,
Comm'rs.

H. W. FORD, *Witness.*
E. H. PULLEN, *Witness.*

EDWIN F. COREY, aged 51 years, produced and being first duly sworn, in answer to the annexed interrogatories answers and says:

In answer to the first: I reside in the city of New York, and was a commissioner for the several States, and now reside in same place, and am engaged in the same business, in connection with other matters.

2. & to the second: I have knowledge of such assignment. I was a witness to the assignment, and the acknowledgement was made before me.

3. & to the third: I witnessed it in my individual capacity, and the acknowledgement was taken by me in my official capacity
250 as a commissioner of deeds for the State of Georgia. The witnesses were myself and H. W. Ford, who is the cashier of the Bank of the Republic, well known to me. Mr. H. W. Ford is alive. I know his signature.

(Exhibit A, Oct. 19th, 1887, shown witness.)

4. & to the fourth: This is the original assignment, dated May 7th, 1874, and acknowledged before me on the 8th day of May. It is part printed and part written. It bears my individual signature; also my official signature as a commissioner for the State of Georgia & an impression of my official seal. I was then known and in the habit of signing as Edwin F. Corey, Jr.

(Exhibit marked "Copy A" shown witness.)

This is a true copy of the assignment, together with my official certificate, which I attach to my answers.

5. And to the fifth: I know the handwriting of Robert H. Lowry, late president of the Bank of the Republic, and that his signature to the assignment is genuine.

EDWIN F. COREY.

Answered & subscribed & sworn to before us this 27th day of October, 1887.

GHERARDI DAVIS,
HENRY C. DE WITT,
Commissioners.

251 Copy "A," for identification, October 19th, 1887. Henry C. De Witt, Gherardi Davis, commissioners; Edwin F. Corey, witness.

Assignment of Mortgage.

Know all men by these presents that the National Bank of the Republic, a body corporate of the city and State of New York, party of the first part, in consideration of the sum of sixty thousand and nineteen dollars and eighty-eight cents, lawful money of the United States, to said bank in hand paid by Gazaway B. Lamar, of the State of Georgia, party of the second part, at or before the ensealing and delivery of the presents, the receipt whereof is hereby acknowledged,

has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part a certain indenture of mortgage bearing date the seventeenth day of March, in the year one thousand eight hundred and sixty-eight, made by Caroline A. Lamar, administratrix of the estate of Charles A. L. Lamar, to secure the payment of eighty thousand dollars and interest, together with the bond or obligation therein described and the money due and to grow due thereon, with the interest; to have and to hold the same unto the said party of the second part, his legal representatives and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned; and said bank doth hereby make, con-
252 stitute, and appoint the said party of the second part its true and lawful attorney, irrevocable, in its name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as said bank might or could do if these presents were not made.

The said mortgage was recorded in the office of the clerk of the superior court, Chatham county, State of Georgia, in County Records Book 4 A, folios 142, 143, 144, the 18th March, 1868, and the said bond or obligation was also recorded in said office in County Records Book 4 A, folios 141, 142, 18 March, 1868.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and attested by its cashier under authority of its board of directors the seventh day of May, one thousand eight hundred and seventy-four.

R. H. LOWRY, *President.* [SEAL.]

In presence of—
Attest: H. W. FORD, *Cash.*
EDWIN F. COREY, JUN.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it known that on this eight- day of May, A. D. 1874,
253 before me, Edwin F. Corey, Jr., a commissioner for the State of Georgia, duly commissioned and qualified and resident in said city and county, personally appear- R. H. Lowry, to me personally known to be the president of the National Bank of the Republic, of New York, the grantor named in and who executed the above instrument by its said president, who acknowledged that he executed the above instrument by authority of a resolution of the board of directors of said bank and for the uses and purposes therein named and mentioned.

In witness whereof I have hereunto set my hand and official seal the day and year aforesaid.

EDWIN F. COREY,
[SEAL.] *Commissioner for the State of Georgia in New York.*

"Assignment dated May 7th, 1874, recorded in Mortgage Book 'G,' folios 481 & 482, June 16th, A. D. 1875."

[SEAL.] GEO. P. HARRISON,
Clerk S. C., C. C.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

We, the undersigned, commissioners herein, hereby certify that the above depositions were taken by us, as stated in the caption, and reduced to writing in our presence, and the exhibits used by the witnesses and referred to herein were all marked by us with our names and the date of production.

254 And we further certify, each for himself, that he is not interested in the cause nor of kin to or counsel for either party.

In witness whereof we have hereunto set our hands and seals this 27th day of October, 1887.

[SEAL.] GHERARDI DAVIS,
Commissioner.

[SEAL.] HENRY C. DE WITT,
Commissioner.

Commission to Examine Witness T. H. Porter for Complainant.

UNITED STATES OF AMERICA, }
Southern District of Georgia, Eastern Division. }

In the Circuit Court of the United States for the Southern District of Georgia.

255 To Wm. Cary Sanger & Gherardi Davis, 32 Liberty St., N. Y., and Thomas Hunt, 40 Pine St., New York, on the part of complainants, and Henry De Witt or Courtland Parker, 120 Broadway, New York, on part of defendants, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, to wit, Harriet Cazenove Jones and Frank Cazenove Jones, adm'r-of G. B. Lamar, *vs.* Caroline A. Lamar *et all.*, as well on the part of said complainants as on the part of said defendants or either of them; and it is required of you (or any two or more of you) that, on certain days and at certain places by you to be appointed for that purpose, you do cause the said T. H. Porter, who resides in the city of New York, witness on the part of the complainants, to come before you and then and there examine him upon the said interrogatories on his corporal oath, first taken before you (or any two or more of you) on the Holy Evangelists, and that you do take such examination and reduce it into writing, and when you shall have so taken it you are to send the same to the clerk of the cir-

cuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set,
256 together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness- to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Savannah, this 14th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, and the one hundred and twelfth year of American Independence.

[Seal of U. S. Circuit Court.]

S. F. B. GILLESPIE,
Deputy Clerk.

257 *The Commissioners' Oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you, and you shall not pub''sh, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them to be taken by you and the other commissioners in the said commission named or any of them by virtue of the said commission until publication shall pass by rule or order of said court, so help you God.

WM. CARY SANGER.
HENRY C. DE WITT.

Subscribed and sworn to before me this 30th day of November, A. D. 1887.

HENRY C. DE WITT, *Com'r.*
WM. CARY SANGER, *Com'r.*

The Clerk's Oath.

You shall truly, faithfully, and with- partiality to any or either of

the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses
258 produced before and examined by the commissioners or any of them named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioners or any of them to take, write down, or engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them to be taken, written down, transcribed, or engrossed by you or whereto you shall have recourse or be in anywise privy until publication shall pass by rule or order of the said court, so help you God.

——— ———.
——— ———.

Subscribed and sworn to before me this — day of ———, A. D. 18—.
——— ———.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, Adm'rs Estate G. B. Lamar, Compl'ts, and CAROLINE A. LAMAR *et al.*, Defend'ts. } In Equity.

Interrogatories to be addressed to T. H. Porter, a material witness for complainants, who resides out of the State of Georgia and is in the State of New York.

259 1st. Do you know the parties to the above suit; and, if yes, how long have you known them? Did you or not know the late Gazaway B. Lamar in his lifetime; and, if yes, when, where, and how long did you know him? Where do you reside?

2nd. At the time you knew said G. B. Lamar was he or not engaged in any regular business or occupation which required the keeping of books and the making of daily entries therein; and, if yes, can you state where he kept his books and transacted his business at the time you refer to?

3rd. Can you state, from the knowledge of his business methods or your dealings with him, whether or not he usually kept correct books? And, if you answer in the affirmative, please mention any facts or circumstances you now recall showing his business habits and usual correctness.

5th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

GEO. A. MERCER,
HENRY R. JACKSON,
Solic. for Compl'ts.

260 The defendants object to the several interrogatories on the ground that they are seeking irrevelant, illegal, and immaterial testimony thereby. Subject to this objection the defendants propound the following cross-interrogatories:

1. If you state that you had business transactions with G. B. Lamar in his lifetime, please state explicitly the nature of your business transactions with him, at what place, and at what time did those transactions take place. Did you have any transactions with him while he was engaged in business in the city of Savannah during the war between the State-? Did you have any business with him in Savannah subsequent to the war? Do you know anythings of his books of account kept while in Savannah?

2. Did Mr. Lamar keep his own books or did he have a clerk to keep them?

3. If you say that you had transactions with Mr. Lamar which were entered in his book, please state what these transactions were fully and particularly. Did you not occupy a position in the bank of which Mr. Lamar was president? Don't you know that Mr. Lamar's time after the war was almost entirely consumed by his efforts to collect his cotton claims and those in which he was intrusted from the Government? What else was he engaged
261 in after the war? Did not that business harass and annoy him very much?

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
For Defendants.

Legal service acknowledged. Filing time — copy notice waived. Let commissioned issue to Wm. Cary Sanger, Gherardi Davis, 32 Liberty St., New York, and to Thomas Hunt, 40 Pine street, New York, with power to either to take the testimony on behalf of complainants, and to Henry De Witt or Courtland Parker on behalf of defend'ts.

LAWTON & CUNNINGHAM,
CHISHOLM & ERWIN,
F. G. DU BIGNON,
For Defendants.

Answers.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

HARRIET CAZENOVE JONES & FRANK CAZENOVE JONES, Adm'r-Estate G. B. Lamar, Compl'ts,
and
CAROLINE A. LAMAR *et al.*, Def'ts.

Examination and deposition of witness produced, sworn, and examined by the undersigned commissioners in virtue of
262 the annexed commission issuing out of the honorable circuit court of the United States for the southern district of Georgia, taken and reduced to writing in the city, county, & State of New York on the thirtieth day of November, 1887.

TIMOTHY H. PARKER, aged 60 years, being duly sworn, answers and deposes as follows, to wit:

1st. To the first direct interrogatory the witness, answering, saith: I know the complainants. I am not sure I ever met any of the defendants. I have known Mrs. Jones since 1857 & Mr. Jones since about the time of his marriage, five or six years ago. I knew Mr. G. B. Lamar in his lifetime; formed his acquaintance about 1850 to 1852, and knew him up to the time of his death. I knew him in New York and have met him in the South, but my acquaintances was principally with him here as a resident of New York. Up to the commencement of the war he was in New York; then he resided in Georgia during the war; then removed to New York; where he lived until his death. I did not see him during the war. I reside in Stamford, Connecticut.

2. & to the second: When I first knew Mr. Lamar he was president of the Bank of the Republic. I did not know of his being engaged in any other business. My acquaint-
263 ance with him was social and friendly, and I did not know enough of his business affairs at that time to say anything about business he was engaged in except that he was president of the Bank of the Republic; consequently I do not know of his keeping any personal or business books except those of the bank. I was informed that he was engaged in business during the war that required keeping books and daily entries, mostly at Savannah, Ga. It was the cotton commission & guano business. After his return to New York, at the close of the war, his business and occupation was caring for his estate, which required keeping books and making regular entries. I do not know whether they were daily or not. These books were kept in New York.

3. & to the third: During his residence in New York after the war I did have transactions with him which he entered in his books.

4. & to the fourth, &c.: Yes; from my knowledge of his business methods & my dealings with him I can state that he kept correct books and was one of the most exact and methodical of men in his business methods that I have ever known. In any orders I received from him for the foreclosure or sale of securities he was very particular to require notices and statements and full data for making the proper entries in his books. One circumstance I remember. He once applied to me for a loan of six or seven thousand dol-
264 lars, to be made to him the next day, to which I agreed. The next day I had the cashier of my firm draw a check for Mr. Lamar for the required amount. I handed it to Mr. Lamar. He said, I am not ready for this yet. I have not my collaterals at hand. I replied that he could hand those to the cashier at any time. He answered, No; that is not business, & refused to receive the check until he produced the collaterals and had the loan arranged in an exact form, as if it had been a loan of one hundred thousand dollars. Another which made a marked impression upon me as illustrative of his scrupulous and conscientious exactness in business methods: In 1873 he told his son-in-law, Mr. Robert Soutter, that if he would select a suitable house as a home for his wife & family he, Mr. Lamar, would purchase it for him. Mr. Soutter, some weeks after, found such a house and reported to Mr. Lamar. Mr. Lamar approved of the selection, but told Mr. Soutter that he was not at that time in condition to buy the house & pay cash, & directed Mr. Soutter to make the purchase himself and he would reimburse him.

Mr. Soutter made the purchase, making a cash payment of $10,000 and executed a mortgage for the balance of the purchase-money.
After Mr. Soutter took possession of the house, moved his
265 family into it, being very ill and apprehending his possible death, he wished me to speak to Mr. Lamar on that subject, which I did. Mr. Lamar said to me that the facts were all just as I had stated them, and that as soon as his finances were in a more satisfactory condition he would do exactly as he had promised. I suggested to Mr. Lamar that inasmuch as this agreement was merely verbal that to avoid any possible misunderstanding or complication he had better write me a letter covering the situation of the case. Mr. Lamar replied that the proper way was for me to go to Mr. Lamar's attorneys and have prepared a suitable document covering the case & he would execute it. I did so, & the attorney prepared a bond of indemnity, by which Mr. Lamar agreed to refund to Mr. Soutter the money advanced and save him harmless on account of this purchase. Mr. Lamar executed and delivered it to me for Mr. Soutter.

A number of months after this transaction and after Mr. Lamar had collected from the Government one of his cotton claims Mr. Lamar came to me, I being Mr. Soutter's executor, Mr. Soutter having in the meantime died, and wished to pay his liability. I told him that was very simple. It was the $10,000 cash payment and the amount of the mortgage. He said that did not include

266 the interest. I then made a memorandum of the interest on the cash payment and the interest that had been paid on the mortgage. Mr. Lamar corrected me again, and said that Robert was entitled to the interest on the payments of interest made on the mortgage, and insisted upon the adjustment being made that way. I prepared on that basis a statement, & Mr. Lamar said that did not meet the full case; that Robert had been to considerable expense in putting on that mortgage, and insisted that the attorney's fees for that service, as well as for preparing the bond of indemnity, should be included in the amount due. This was added, and he gave me a check for the entire amount.

5. & to the fifth, &c.: After Mr. Lamar recovered his books from the United States Government, which had taken possession of them and kept them in their custody for a number of months—in fact, I think more than a year—Mr. Lamar asked my permission to have them stored in the vaults of our firm. I gave permission, and the books were brought and remained up there to the time of Mr. Lamar's death. A few weeks after we received them he asked if we could not accom-odate him & his book-keeper with desk room for the purpose of poasting or writing his accoun's. I told him we would do so, & I surrendered to him my own private office for that purpose. This work was more protracted than I had ex-
267 pected, and I was becoming a litt'e impatient to know how much longer it would continue, so I asked his book-keeper one morning how he was getting along. He replied, Very slowly; Mr. Lamar is so particular that some days I don't get on at all; for instance, he says I have spent the last two days in verifying a little entry of less than a hundred dollars, and Mr. Lamar has made me go over files of letters and files of vouchers with a view of verifying everything to the last cent. When Mr. Lamar came to the office later in the day I ventured to suggest to him as to whether he was not taking unne-ssary trouble in verifying these entries upon his books; that as he was acquainted with all the facts and transactions, and that with his knowledge and habits & business methods there could be no reasonable doubt as to their correctness, and that he might, as it seemed to me, assume them to be correct instead of proving every item as though it was disputed.

His reply was that he did not think it was unnecessary to be sure he knew it to be correct because he knew all about it, but *his* wanted his books in such form that any fact could be equally clear to others who did not know about it; that he kept his books not for his own benefit alone, but for those who might come after him; that the object in keeping books was not for a mere aid to the memory and to guard against forgetfulness, but to provide an infal-ible and unquestionable record of your transactions, and that could
268 speak for you if for any reason it should happen that you were unable to speak for yourself.

I know that Mr. Lamar was the most exact and particular man in the manner and method of his book-keeping that I have ever known.

Adjourned to Dec. 1st, 1887, at 11 a. m.

NEW YORK, *Dec. 1st*, 1887.

Both commissioners present.

Timothy H. Porter, witness, further answering the fifth interrogatory, says: In fact, Mr. Lamar carried his book-keeping systematically into matters of personal expenditure; he opened accounts in his regular books with the different members of his family; he opened a furniture account in connection with his household expenses, in which he made his regular entries in the same methodical way as he would keep a construction account in connection with a manufacturing corporation. His book-keeping was a kind of hobby with him, and it was a matter of jest and pleasantry to those of us who knew of this characteristic, and we used to say that Mr. Lamar could not live without his books. I further say, in answer to the fifth question, I do not know what this litigation is about, but, if it is anything in which Mr. Lamar was an actor or anything in which he had an interest, I have no doubt but that a
269 full and complete record of the transaction will be found in his books, and it would be a benefit and advantage to the parties at issue in this cause to examine and consult Mr. Lamar's books and receive the record, which I have no doubt will be found in them if Mr. Lamar was interested.

And to the first cross-interrogatory witness answers & says: My business transactions with Mr. Lamar consisted of the purchase of securities for his account and collection of drafts for him. We collected for him his Treasury warrants for his cotton claims; aside from this I do not recall any particular transactions except those I have detailed at length in my previous testimony. These transactions took place in the city of New York after the close of the war, for the most part probably about 1873 & 1872 & 1874, possibly somewhat earlier, but all after the close of the war and after *the* Mr. Lamar's return to New York city to live. I had no transactions with him while he was in business in Savannah, during the war between the States or subsequent to the war. I simply know that his Savannah books of account were in our custody for several
270 years; in fact, the whole time after they were recovered from the Government until his death.

2 X. & to the second cross, &c.: Sometimes he kept his own books without aid, making all the entries himself, and at other times he kept a clerk to aid him.

3 X. & to the third cross: I recall nothing in addition to what I have already stated, & in order to state fully and particularly I would have to refer to the books of my old firm of Soutter & Co. I have no doubt that all these transactions were entered in Mr. Lamar's books. I did not occupy a position in the bank in which Mr. Lamar was president. I know that it was his main business to collect his cotton claims & those in which he was interested. His efforts to collect his claims from the Government, the investments of his money, and the care of his estate occupied his entire time. His claims against the Government, their refusal to pay them, & what

he considered the great injustice to which he was subjected on this account did harrass and annoy him very much.

TIMOTHY H. PORTER.

Answered and sworn to before us, — above stated, on Nov. 30th & Dec. 1st, and subscribed on first day of December, 1887.

WM. CARY SANGER,
Commissioner. [SEAL.]

[SEAL.] HENRY C. DE WITT,
Commissioner.

271 HARRIET C. JONES and FRANK C. JONES, Administratrix and Administrator of the Estate G. B. Lamar, with the Will Annexed, Complainants,
and
CAROLINE A. LAMAR —, Defendants. } In Equity.

After all the evidence was offered and passed upon by the court the plaintiffs rested their cause, and the defendants renewed their demurrer to the sufficiency of the evidence and moved to dismiss the bill. Thereupon elaborate arguments were had, in which solicitors for the plaintiffs and the defendants took part; and the court, taking time to consider, on the 20th day of April thereafter, in term, rendered and pronounced the following decision and judgement, which is ordered of file, and that it be made a part of the transcript, the judgement and decree having been taken in accordance therewith.

EMORY SPEER, *Judge.*

272 *Opinion of the Court.*

JONES *et al.*
vs.
LAMAR *et al.*

(Circuit Court, S. D. Georgia, W. D., April 20, 1888.)

1. Executors and administrators, actions against—Bill for renewal of mortgage—Jurisdiction—Parties.—A sold land to B; having given a prior mortgage to C, B died. A and C filed a bill against the administratrix of B to "authorize" her to take up the mortgage and give a new mortgage therefor. The bill and answer were filed and the verdict and decree granting the prayer rendered on the same day. The children and heirs of B were not parties or represented. It did not appear that A was unable to pay off his mortgage: Held, that the court had no jurisdiction to authorize such a proceeding, and as to the mortgage in the hands of A, who had become the owner by assignment, it was null and void as to the children.
2. Same—Powers over real estate.—Under the laws of Georgia realty descends directly to the heirs, subject to be administered

by the legal representative for the payment of debts of the estate and the purpose of distribution only.

3. Same—Construction of statutes.—Statutes giving administrators power over realty are in derogation of the common law and must be strictly construed, and the administratrix is not the legal representative of the heirs when acting without the scope of her limited powers.

273 4. Same—Power to sell and incumber real estate.—Under the laws of Georgia an administratrix is not authorized to dispose of the real estate of her intestate at private sale, not to create any incumbrance on the estate by note, mortgage, or otherwise.

5. Same—Equity jurisdiction.—Under the laws of Georgia equity cannot interfere with the regular administration of estates, except upon application of the representative for construction and direction for marshaling the assets, or upon application of any person interested in the estate, where there is danger of loss or other injury to his interest.

6. Same.—In the absence of statutory authority the equity courts of Georgia have no power to authorize an administratrix to incumber the estate of her intestate by a mortgage or to change the priority and dignity of debts against the estate.

7. Same—Authority to compromise.—The authorization of an administrator to compromise contested and doubtful claims against the estate is no warrant for illegal transactions in the process and result of the settlement.

8. Same—Personal liability—Execution of negotiable paper.—If an administratrix make, indorse, or accept negotiable paper she is *prima facie* liable individually, even if she signed as administratrix, and the estate is not bound, and in this case a *prima facie* case is made against her as to her individual interest, which she is called upon to meet.

274 9. Mortgages—Payment—Assignment.—When a mortgage debt is paid by one in equity bound to pay it an assignment of it to him upon payment operates as a discharge, and he will not in a court of equity be allowed to hold it as a subsisting incumbrance, and such court will look through the entire transaction and fix the duty of payment where it belongs.

(Syllabus by the court.)

In equity.

Evarts, Choate & Beaman, George A. Mercer, and Henry R. Jackson, for complainants; Lawton & Cunningham, Chisholm & Erwin, and F. G. Du Bignon, for defendants.

SPEER, *J.*:

Harriet Cazenove Jones and Frank Cazenove Jones, citizens of New York, as administrators, with the will annexed, of Gazaway B. Lamar, have brought their bill against Caroline A. Lamar, Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar, citizens of Georgia, and aver as fol-

lows: On the 14th of January, 1861, Gazaway B. Lamar gave to the Bank of the Republic, of New York, his bond and mortgage for $164,000, payable to himself as president of the Bank of the Republic. The mortgage created a lien upon certain real property then owned by the mortgagor. This realty was situated in the
275 city of Savannah, and was known as "Lamar's wharves, press, warehouse," &c. On the 31st of December, 1863, Gazaway B. Lamar conveyed to Charles A. L. Lamar certain lands in the city of Savannah, including the property covered by this mortgage to the Bank of the Republic, and it is charged that the purchaser, Charles Lamar, bought with knowledge of the mortgage, and remained in possession of the property until his death without satisfying the same. Charles Lamar departed this life April 16th, 1865, intestate, and his widow, Caroline A. Lamar, was appointed administratrix upon his estate the 6th of November, 1865, and as such administratrix became possessed of the land covered by the mortgage to the Bank of the Republic, and subsequently conveyed by Gazaway B. Lamar to his intestate. On the 10th day of May, 1866, the Bank of the Republic obtained a judgement of foreclosure of the mortgage, and on the 3rd day of January, 1867, the *fi. fa.* was issued thereupon and was levied upon the mortgaged premises. On the 10th day of January thereafter Mrs. Lamar, as administratrix, interposed a claim to the land as the property of her husband's estate. While the claim was pending the Bank of the Republic, then the National Bank of the Republic, of New York, and Gazaway B. Lamar, as parties complainant, brought a bill in equity against Caroline A. Lamar, as administratrix, in the superior court of Chatham county, proposing to compromise with the estate she represented the mortgage indebtedness of Gazaway B. Lamar to the Bank of the
276 Republic, which constituted a lien upon the lands bought by C. A. L. Lamar from Gazaway B. Lamar. This bill was filed March 6, 1868. The bill here on trial alleges that the answer of the administratrix to the bill in Chatham superior court was sworn to March 6, 1868, and was duly filed; that the issues raised were submitted to a jury, and that the jury found that Charles A. L. Lamar received the deeds to the land with full notice of the previous mortgage of Gazaway B. Lamar to the Bank of the Republic, and that the lands were liable upon that mortgage for $82,000, with interest from January 14th, 1861, and costs, and that it would be to the benefit of the estate to compound the indebtedness by the payment of $80,000, with interest from February 21, 1868, and to secure the same to the National Bank of the Republic, of New York, by the execution of the mortgage now sought to be enforced. On March 6, 1868, a decree was entered upon the verdict which provided that Caroline A. Lamar, as administratrix, should execute and deliver a bond and mortgage for $80,000 to the Bank of the Republic and upon the delivery of such new bond and mortgage the old bond and mortgage should be delivered up to be canceled. She did this — directed, and on the 17th day of March, 1868, executed and delivered to the National Bank of the Republic, of New York, a bond and mortgage for $160,000 conditioned for the payment of $80,000, with

interest from February 21, 1868, the principal to be paid in
277 equal annual installments of $8,000 each. The mortgage embraced the lots and wharves in the city of Savannah bounded on the north by the Savannah river, east by the lot of the hydraulic cotton press, south by a street, and west by Willink's lot, and also the lots lying south of the same and having eastern boundary and all those lands lying east and south of the same, containing 75 acres, more or less, except a certain flour mill and the lot on which it is erected. A copy of the bond and mortgage is attached. Upon the execution and delivery of the new bond and mortgage the old bond and mortgage were surrendered by the said Bank of the Republic, of New York, and the new bond and mortgage were duly placed upon record in the county of Chatham. The bill does not state to whom the old bond and mortgage were surrendered.

The bill now at issue further alleges that on the 7th day of May, 1874, the new bond and mortgage were, for value received, duly assigned to Gazaway B. Lamar, which assignment is also of record in Chatham county and a copy of which is attached. Gazaway B. Lamar continued owner, it is alleged, in his own right of the bond and mortgage up to the time of his death, which occurred in the city and State of New York on the 5th day of October, 1874. He died testate and the complainants were appointed administrators with the will annexed. By virtue of this administration they acquired possession of the bond and mortgage and became
278 charged with the duty of collecting the same. On the 7th day of September, 1881, Caroline A. Lamar, as administratrix, sold 1,377 acres of the land covered by the mortgage, and received therefor the price of $13,770, and on the 17th of September thereafter sold three acres and a fraction and received $5,000, making the sum of $18,770. This was done by authority of the ordinary of Chatham county. The administratrix has never paid or accounted for any portion of the proceeds of these sales. On the 5th day of July, 1882, Caroline A. Lamar, as administratrix, petitioned the ordinary of Chatham county for a discharge from her trust upon the ground that she had fully and faithfully administered said estate up to the final settlement; and on the 10th day of January, 1883, was discharged, the bond and mortgage remaining unpaid. Pending the discharge, on the 27th day of July, 1882, the heirs and distributees of the estate of Charles A. L. Lamar, who are the parties defendant to this bill, entered into a family arrangement and agreed with each other that the estate should be kept together undivided, to *to* held by them as tenants in common, each heir to — her own undivided portion—that is to say, the widow, Caroline A. Lamar, one undivided one-fifth interest of the whole, and each child one undivided part of the remaining four-fifths—all of which will more fully appear by reference to the agreement, a copy of which is attached.

279 The complainants aver that they were residents of New York and had no knowledge of the discharge of the administratrix or the family agreement, and they protest that they should have no effect on complainants' rights as the representatives of the

estate of Gazaway B. Lamar; that Caroline A. Lamar is accountable to them for the proceeds of the mortgaged lands that went into her hands, and that if she distributed the proceeds to the heirs-at-law, each one is accountable for the proportion of said proceeds so received; and if the lands should fail to produce a sufficient amount to satisfy the demand—attorney's fees, commissions, charges, and costs—that the several parties defendant will be liable and bound to contribute from the assets and property of the estate received by them, outside of the property covered by the mortgage, sufficient sums and amount due on the bond and mortgage. That amount is the principal sum of $64,019.88, beside interest. The prayer is for the foreclosure of the mortgage, that the lands be subjected to the lien thereof, and that Caroline A. Lamar be held to account for the proceeds of all the lands embraced in said mortgage, and that the other defendants, to wit, Elizabeth A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia G. Lamar, and Mary S. Lamar, may be held to account for any portion of the proceeds paid to or received by them, and that they may be compelled to contribute such sums as may be
280 necessary to supply and deficiency after sale on foreclosure and to pay the full amount due on the bond and mortgage; that after the sale of the mortgaged premises execution may issue for the collection of any balance, and for general relief. The bill waives discovery. On the — day of February, 1888, the cause came on for final hearing. Plaintiff introduced the letters of administration of the complainant and tendered the bond and mortgage of Caroline A. Lamar, as administratrix, sought to be foreclosed. This was objected to upon the ground that the administratrix had no authority to create a lien of this character upon the estate in her hands. In reply to this objection the complainants offered a certified copy of the bill filed in the superior court of Chatham county, Ga., and the decree rendered thereon, heretofore referred to. The bill was brought by the National Bank of the Republic and Gazaway B. Lamar against Caroline A. Lamar, as administratrix of Charles A. L. Lamar. It alleges the facts with reference to the execution by Gazaway B. Lamar of the original mortgage to the Bank of the Republic substantially as hereinbefore set forth, the foreclosure, attempted sale, and interposition of claim by the administratrix. It further alleged that the lien of the National Bank of the Republic was valid against the property, and that while Caroline A.
281 Lamar interposed her claim to the mortgaged property under a deed of warranty from Gazaway B. Lamar to her intestate, Charles A. L. Lamar, that Charles A. L. Lamar had distinct notice of the existence of the mortgage and accepted the conveyance with the incumbrance upon the property. The bill further alleges that "in a spirit of fairness — conciliation they (complainants) have proposed to the said Caroline A. Lamar, administratrix, &c., to discharge said estate and the mortgaged property from any other claim of the National Bank of the Republic on the payment by the administratrix of the sum of $80,000, or when such sum should be secured by bond and mortgage on the real estate and improvements herein-

before described, and on all the lands formerly owned by Gazaway B. Lamar and by him conveyed to Charles A. L. Lamar" by the deed of warranty aforesaid; and, further, the bill of 1868 continued: "G. B. Lamar has offered and does now offer to said administratrix that, when said sum of $80,000 is paid or secured to be paid out of the said estate of C. A. L. Lamar, so that said sum of $80,000 can be credited on the bond of the said G. B. Lamar to the National Bank of the Republic, the estate of C. A. L. Lamar shall be credited with the said sum of $80,000 on account of any claims of the said G. B. Lamar against said estate of C. A. L. Lamar which your orator, G. B. Lamar, proposes; that the said mortgaged property hereinbefore described, together with the other lands to be also mort-
282 gaged, shall be thenceforth discharged and free from the payment of any claims whatever, present or future, of the said G. B. Lamar, and also from any judgement that may hereafter be obtained by the said G. B. Lamar against said estate." The bill recites that Mrs. Lamar, as administratrix, refused and declined to comply with this "reasonable request and offer," at times pretending that, although the proposition made by your orators to release the property of the said estate of C. A. L. Lamar on the terms hereinbefore set forth was fair and beneficial to said estate, yet the said Caroline A. Lamar as such administratrix has no authority to accede to the same and to bind said estate by executing a bond and mortgage as in the manner aforesaid." The bill charges that she did have authority to "compound said claim" and to execute the bond and mortgage. The prayer of the bill is that Mrs. Lamar may full, direct, true, and perfect answers make to all and singular the matters and things stated; that the mortgaged property may be decreed subject to the debt due to the National Bank of the Republic, and that the said Caroline A. Lamar may be authorized and empowered by the order and decree of this honorable court to execute a bond, with a mortgage on the wharves and press and warehouse and appurtenances, which shall bind said estate to the National
283 Bank of the Republic, and that complainants may have such further release in the premises as the nature of the case may require. The bill is signed by the solicitors for the complainants. It does not appear to be sworn to. To this bill Mrs. Lamar, as administratrix, filed an answer, in which she "admits the propositions for compromise on the part of the complainants as set forth in the bill." She does not expressly admit in her answer that Charles A. L. Lamar was indebted to Gazaway B. Lamar.

The verdict of the special jury in the State court finds that Charles A. L. Lamar received the original conveyance from Gazaway B. Lamar with full notice of the previous mortgage; and, further, finds the amount for which the said property is liable under the said mortgage is $82,000, with interest from the 14th day of January, 1861, and the foreclosure of said mortgage, and that it will be for the benefit of the said Charles A. L. Lamar that the said debt be compounded by the payment by said estate of the sum of $80,000, with interest from the 21st day of February, 1868, or the securing of the same to the said National Bank of the Republic by bond

and mortgage, as suggested in the said bill of complaint and upon the terms and conditions therein set forth. The decree thereupon ordered that Caroline A. Lamar, as administratrix, is authorized to compound the amount due to the said National Bank
284 of the Republic on the mortgage referred to by making and delivering to the said National Bank of the Republic, as administratrix as aforesaid, the bond for the penal sum of $160,000, conditioned to be void upon the payment of the sum of $80,000, with interest from the 21st day of February, 1868, and specified the manner in which the payment should be made, and the said mortgage shall have and constitute a valid lien upon said property; and it is further ordered, adjudged, and decreed that the National Bank of the Republic shall, upon the making and delivering of the said bond and mortgage, deliver up to the said Caroline A. Lamar, as administratrix as aforesaid, to be canceled, the mortgage of the said Gazaway B. Lamar to the said National Bank of the Republic mentioned in the said bill of complaint; and she shall also return to the office of the clerk of this court the execution taken out in pursuance of the foreclosure of that mortgage, and there to remain forever inoperative and of no effect, and shall also give credit to the said Gazaway B. Lamar for the said sum of $80,000 as paid on the said 21st day of February, 1868, on the execution issued in pursuance of the judgement rendered against him for the debt which was secured by his said mortgage, the said execution of force for
285 the unpaid residue of the said debt. It is further ordered and decreed that the said Gazaway B. Lamar shall give credit to the estate of the said Charles A. L. Lamar for the sum of $80,000 paid on the said 21st day of February, 1868, upon any and all claims he may have or assert against the estate, and that the said property mortgaged by the said Caroline A. Lamar, administratrix as aforesaid, by authority of this decree shall be henceforth entirely released from all liability for any debt which may hereafter be found due for any cause existing at or before the date of this decree from the said estate to the said Gazaway B. Lamar, and that no judgement which may hereafter be rendered in favor of the said Gazaway B. Lamar against said estate upon any claim set up by him for any cause existing at or before the date of this decree shall stand or have any lien on the said property. This decree was signed by W. B. Fleming, judge, March 6, 1868. It will be observed that this verdict and decree make no finding or adjudication that any indebtedness existed from Charles A. L. Lamar to Gazaway B. Lamar prior to the death of Charles A. L. Lamar. It will be observed also that the entire arrangement was consummated on the eleventh day after the bill was filed. It was further offered in evidence that Gazaway B. Lamar, on the — day of ——, 1868, gave a credit, by an entry in a book of accounts which he kept of his business, to the estate of Charles A. L. La-
286 mar. This credit was for eighty thousand dollars, $80,000, and it states that it was intended to be in compliance with the decree. It was, however, not given on any account, and while it was admissible *per se*, because offered by the plaintiffs and because it was against Gazaway B. Lamar's interest to make it, and was,

therefore, an omission, it stands alone and is not a part of a general account against the estate of C. A. L. Lamar. Certain letters between the parties were put in evidence; also an account for what purported to be a formal account of Gazaway B. Lamar against Caroline A. Lamar, as administratrix of C. A. L. Lamar. The amount and the items of this account are so indefinite that it is impossible to say how much was the demand. The books of Gazaway B. Lamar were tendered in evidence, but they were excluded by the court upon the ground that they were not admissible as books of account under the laws of the State of Georgia upon that subject, not being books of original entry and otherwise objectionable.

When the evidence for complainants had closed the defendants demurred to the same and moved to dismiss the bill upon the grounds, generally, as follows: That Gazaway B. Lamar had sold the mortgaged premises to Charles A. L. Lamar with warranty of title, and was, therefore, bound to protect the land against existing incumbrances. When it was found that an unrecorded
287 mortgage had been executed by Gazaway B. Lamar prior to the sale to his son and it was sought to enforce the same by the mortgagee, the National Bank of the Republic, he, Gazaway B. Lamar, was in equity bound to discharge the lien of the mortgage and free the lands which he had sold and the title which he had warranted. Mrs. Caroline A. Lamar, as administratrix, was compelled to execute the new mortgage now sought to be enforced in order to save the premises to the estate. Had Gazaway B. Lamar done his duty towards the estate this would have been unnecessary, for he was primarily bound to pay the debt secured by the mortgage. Nevertheless she was compelled to give the mortgage. Thereafter, when Gazaway B. Lamar bought the mortgage for his own purpose, he did no more than he should have done in the beginning, and he cannot now be heard to enforce this mortgage against the estate of his son, C. A. L. Lamar. The complainants reply to this proposition by stating that Charles A. L. Lamar was largely indebted to Gazaway B. Lamar, and that when Caroline A. Lamar, as administratrix, executed the mortgage upon the property of the estate she was fully recompensed by the credit of $80,000 which Gazaway B. Lamar gave upon his accounts against Charles A. L. Lamar and by the other propositions of the bill. The estate, the complainants insisted, was bound to pay Gazaway B. Lamar a large sum; how much or for what does not appear in
288 the evidence. The defendants insist, in effect, that the complainants are bound to make out by proof these demands against the estate, and having failed to do so, the bill must be dismissed. The fundamental inquiry of the court in the determination of this weighty and interesting controversy has been this: Was the decree of the superior court of Chatham county, by which Caroline A. Lamar, administratrix, was authorized to create this incumbrance upon the assets of the estate in her hands, within the jurisdictional power of a court of equity of the State of Georgia? A judgement of a court without jurisdiction of the person or the subject-

matter, or void for any other cause, is a nullity, and may be so held in any court when it becomes material to the interest of the parties to consider it. Code Ga., par. 3594. It is insisted with great earnestness that the superior court of Chatham county was satisfied by the proofs and the hearing before it that this arrangement for the creation of complainants' mortgage was for the best interest of the estate; that the court here is bound to presume a regular trial on orderly and legitimate hearing and determination. Now, it is perfectly evident from the entire transaction that it was effected *sub silentio;* that no evidence was presented that the estate of C. A. L. Lamar was indebted to Gazaway B. Lamar, and the decree does not mention any liability of the former to the latter. It could
289 not have been a regular or legal hearing where, as it was insisted, the issue was made upon the bill and answer and submitted with proofs to the jury. The bill was filed on the 6th of March. With astonishing promptitude, the answer of Mrs. Lamar was filed on the same day. On the same day the verdict was taken. On the same day the decree was signed. The whole proceeding was had in term, and not at chambers, and thus in 24 hours, by this most unusual and extraordinary proceeding, the lands of this estate were saddled with a debt of $80,000, and yet, under the law and the practice in equity, the bill must have been brought and pending for more than six months before this decree could have been legally taken; and, in addition to these startling facts, it appears from the record that the court was not advised that there were children whose interests were being signed away, and no effort was made to protect them, even by the appointment of a guardian *ad litem.* Their names were not mentioned in the proceeding. It was, then, one of those consent proceedings which are sometimes advised by counsel because of their entire confidence in the parties concerned, and there being nothing in serious dispute suggesting careful investigation, the law is not so diligently regarded as it should be. But had there been a most earnest and careful controversy and investigation, still if the chancellor
290 who authorized the administratrix to create this huge mortgage upon the estate she represented acted without jurisdiction, it would be the duty of this court, if the interest of the parties required it, so to hold; and this is not only the statute law of Georgia, but it is well settled by the most carefully considered decisions of the most elevated tribunals. In the case of Williamson *v.* Berry, 8 How., 540, a case in some respects very similar to that under consideration, the doctrine was announced by the Supreme Court of the United States in this language.

"We concur that neither orders nor decrees in chancery can be reviewed as a whole in a collateral way; but it is an equally well-settled rule in jurisprudence that the jurisdiction of any court, when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings, the rule prevails whether the decree or judgement has been in court of admiralty, chancery, ecclesiastical court, or court of common law,

and whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of States."

Many years after this case was decided it was cited with approval, and the precise language here quoted was repeated as a clear and satisfactory enunciation of the law. Thompson *v.* Whitman, 18 Wall., 468. This doctrine has been uniformly adhered to by the courts of the United States since 1794, and its embodiment
291 in the carefully worded statutes of Georgia evinces not only its certainty, but its importance. It is no reply to this proposition to refer to the eminence of the tribunal which has exercised unwarrantable power. In Williamson *v.* Berry, *supra*, it had been the illustrious Kent, then chancellor in the equity courts of New York, who had authorized a trustee to convey real estate for the benefit of the *cestui que trust.*, but the Supreme Court did not hesitate to declare null and void his action. So lofty a body as the Congress of the United States assumed jurisdiction by a trial before its bar to interfere with the rights of a person, and the courts (in Kilbourn *v.* Thompson, 103 U. S., 168) declared that in its judgement it exceeded its jurisdiction, and held its representative responsible in damages for his action carrying into effect the wrong. These are extreme cases; but they show the familiarity and the necessity of the rule that where a tribunal is without jurisdiction its action is utterly void and unavailable for any purpose.

Now, did the superior court of Chatham county have jurisdiction to grant the decree upon which the complainants rely? It is well, perhaps, again to analyze this record. The parties to the bill upon which the decree was granted were the National Bank of the Republic and Gazaway B. Lamar, as complainants, and Caroline A. Lamar, the administratrix of Charles A. L. Lamar, as de-
292 fendant. The statement of the bill was *was* that Gazaway B. Lamar had sold to Charles A. L. Lamar the lands in controversy and warranted their title, but that Charles A. L. Lamar had bought with notice of an unrecorded mortgage upon the lands which had been previously executed by Gazaway B. Lamar to the Bank of the Republic; that Mrs. Lamar, administratrix, when this mortgage had been foreclosed and levied upon the lands, after the death of her husband, interposed a claim under the deed of Gazaway B. Lamar; and the bill further stated that it would be better for the estate of Charles A. L. Lamar for the administratrix to assume the debt to the extent of $80,000, which Gazaway B. Lamar owed to the Bank of the Republic and which the bill stated was a lien upon the lands, and to give the mortgage therefor upon which complainants are now asking a decree for foreclosure here. In consideration of this Gazaway B. Lamar undertook to pay the remainder of his debt, and further, as proposed by the terms of his bill, as follows: "G. B. Lamar has offered and does now offer to said administratrix that when said sum of $80,000 is paid or secured to be paid out of said estate of C. A. L. Lamar, so that said sum of $80,000 can be credited on the bond of the said G. B. Lamar to the National Bank of the Republic, the estate of C. A. L. Lamar shall be credited
293 with the said sum of $80,000 on account of any claims of the

said G. B. Lamar against said estate of said C. A. L. Lamar, which claim your orator G. B. Lamar avers to be much greater that the said sum of $80,000." It is proper to observe at this point that this is the only specification of the alleged claims of G. B. Lamar against the estate of C. A. L. Lamar. Neither the amount or the items are mentioned in the bill or the decree, and the only other reference to them is to be found in the following proposition, also made by Gazaway B. Lamar as a consideration for the execution of the mortgage by the administratrix: "And, further, that the said mortgaged property hereinbefore described, together with the other land to be also mortgaged, shall be thenceforth—that is to say, on the execution of the mortgage by Mrs. Lamar, administratrix—discharged and free from the payment of any claim whatever, present or future, of the said G. B. Lamar against the said estate." The charge of the bill is that Mrs. Lamar refused this proposition, notwithstanding the "spirit of conciliation and fairness in which it was made," one of her pretenses, as the bill says, being that she had no authority to compound the claim. The complainants, insisting that they are without redress at law, pray (1) that the administratrix may answer the bill; (2) that the mortgaged property be decreed to
294 be subject to the debt, and (3) that the administratrix be authorized and empowered to accept the compromise. It is difficult to understand the ground upon which discovery was sought by this bill or what was the discovery sought. There is literally not an averment in the bill upon which a court of equity would compel discovery, nor is it alleged that discovery is necessary. It is difficult to perceive any legal reason why the bill was filed. It cannot be seriously insisted that such was its object. It does not allege that Gazaway B. Lamar was insolvent nor that the estate of C. A. L. Lamar was insolvent. In the absence of these allegations, why did not Gazaway B. Lamar pay off the debt to the Bank of the Republic which he had contracted and which the bank was seeking to enforce, and thus relieve the land he had sold his son from the lien of the mortgage? If he held claims against the estate of his son, why did he not present those claims in the manner usual in the administration and settlement of estates? Mrs. Lamar, as administratrix, and Charles A. L. Lamar, her intestate, were neither of them parties to the mortgage which the bill seeks to declare a lien upon the land.
It was no debt of the estate. It is true that the bill prayed
295 that the land of the estate be decreed subject to this lien, but that was altogether superfluous and apparently was an attempt to give jurisdiction in equity in plain violation of the law of the State. The bill charged that a proceeding to subject the land was already pending in a court at law; that the land has been levied on and a claim interposed, and the court of law having jurisdiction of that question, the court of equity had no power to interfere with it. The Code of Georgia, which controls this Georgia case, is plain and simple in its mandate upon that topic: "Where law and equity have concurrent jurisdiction the court first taking it will retain it unless good reason be shown to the contrary." Code Ga., par. 3096. This is the statute law, and repeated decisions of the supreme court

of the State enforce its provisions. It is not even pretended that there is any reason to transfer this controversy from a court of law to a court of equity, and the ground of equity jurisdiction is narrowed down to the attempt to have the court authorize Mrs. Lamar, as administratrix, to pay off a large portion of the debt of Gazaway B. Lamar to the Bank of the Republic from the estate of her husband and to receive in lieu of the property so conveyed the intangible promise of credit upon demands against the estate, which are certainly in-
296 volved in a degree of uncertainty and obscurity painful to the mind seeking an equitable adjustment of this controversy. It is true that in her answer the administratrix practically consents to the exercise of this jurisdiction, although she neither admits that the estate is indebted to G. B. Lamar nor that the mortgage is a lien on its lands; but a party by consent, express or implied, cannot give jurisdiction to the court of the person or subject-matter of the suit, so far as the rights of third persons are concerned. Code, par. 3460. Now, the third persons, whose interest it is important to consider, are the codefendants of the administratrix here—the children of herself and Charles A. L. Lamar. They were not parties of this extraordinary proceedings to authorize the administratrix to incumber the lands of the estate. It cannot be doubted that they were necessary parties, even had the court jurisdiction of the subject-matter. Now, it was sought to convey the real property of the estate by this mortgage, and realty in Georgia de-cends directly to the heirs, subject, however, to be administered by the legal representative for the payment of the debts or the purposes of distribution. Code, par. 2246. The powers granted to an administratrix over the lands are
297 thus carefully guarded. She has title sufficient for purposes of distribution; she has title sufficient for purposes of paying the debts of the estate, but not the debts of other persons. This doctrine is reiterated in section 2483 of the Code, which reads: "Upon the death of the owner of any estate in realty, which estate survives him, the title vests immediately in his heirs-at-law. The title to all other property owned by him vests in the administratrix of the estate for the benefit of his heirs and creditors." Code, par. 2483. It follows, then, that the title to their distributive shares of this land vested in the children of Charles A. L. Lamar *eo instanti* of the death of their father; and since it cannot be pretended that they are parties, they are in no sense affected by this decree, unless there is merit in the contention of counsel that in this matter they were so far represented by the administratrix that they are bound by her action. As a general rule, it is true, as contended by the complainants' solicitors, that in a suit against the executor or administrator the legatees and heirs are not necessary parties. Beall *v.* Blake, 16 Ga., 136; Calv. Parties, 20. It will be found, however, that in every case where the administrator is held to represent the heirs with the effect of defeating their complaints at his action, or their rights of which
298 he had disposed, it was in some matter or for some purpose where he was in discharge of a duty imposed upon him by the law. In the case just cited it was an attempt to recover a residuary legacy, and for the purpose of distribution, as already stated,

the title was in the executor. In Redd *v.* Davis, 59 Ga., 822, cited upon the same point, there was simply a proceeding to amend the judgment against the executor as such and to subject property liable for a debt of the estate, and, as has been said, the title was in the executor to pay debts; but even here the supreme court decides *dubitante*, page 28. In Barclay *v.* Kimsey, 72 Ga., 725, a case in which the court has unquestionably strained the doctrine to the last extremity of tension, it was a question of the settlement of accounts and the payment of debts due by the estate, the purpose for which the title to the land was vested in the administrator. In Dean *v.* Cotton Press Co., 64 Ga., 670, the sale was made to pay a debt and to make distribution required by the will. This was a question of distribution, and was so held. In Ansley *v.* Pace, 68 Ga., 402, there was a petition for leave to sell realty to pay debts and for the support of the *cestuis que trustent*. Besides, a guardian *ad litem* was appointed for the minor children, who accepted
299 the trust, and had full knowledge of all the facts. In Wilkinson *v.* Tuggle, 61 Ga., 381, Chief Justice Warner, in delivering the decision of the court, held that the land was legally sold by the executor in the due course of administration, and this executor was a party to the bill and answered it, and admitted that there had been a legal and valid sale of the land by him as such executor; and that being so, said the chief justice, "he represented the legatees and devisees under the will of his testator so far as to legally dispose of his estate in the due course of the administration thereof." This comprises every case on this point cited upon the brief of the learned solicitor for the complainant, and no case has been found where it has been held that the heirs-at-law are divested of their title by a proceeding to which they were not parties and where the administrator has acted, not only without the sanction of the law, but clearly beyond the powers imposed for his representative duties, unless the rights of *bona fide* purchasers have accrued. Here the persons seeking advantage by the illegal proceeding are parties to it, and are, of course, chargeable with knowledge of all its wrong and illegality. It is safe to say in this case that for every purpose for which title to realty is vested in the administratrix, no
300 matter how irregular may have been her action, the heirs are bound by it; but as to matters as to which the administratrix had no right in *in* to act the heirs are not represented by her and not parties thereto and can repudiate her action whenever it becomes necessary to do so.

Now, it is true that administrators have authority to compromise all contested and doubtful claims for or against the estate or wards they represent; Code, par. 2882; but the compromise must be effected in a legal manner. An administratrix would have no power to sell the land of the estate at private sale in order to compromise a contested or doubtful claim against it, nor would the administratrix have any power to mortgage the lands of the estate for any such purpose; nor could a court of equity under the statute law of Georgia give that power. She has literally no power to create an incumbrance on the estate by note, mortgage, or otherwise. Mc-

Farlin *v.* Stinson, 56 Ga., 396; Gandy *v.* Babbitt, *id.*, 640; Harrison *v.* McClelland, 57 Ga., 531; 1 Jones Mortg., par. 102. In the first case cited Chief Justice Warner declares: "It is undoubtedly true that the assets of the estate of the deceased testator are liable for the payment of the debts and obligations contracted by him
301 in his lifetime; but it would be a novel and dangerous doctrine to hold that the assets of a deceased testator could be liable for the contracts made by his executor after his death; so dangerous to the assets of deceased testators that the law does not allow it to be done. An administrator or executor can only bind himself by his contract. He cannot bind the estates of the deceased. Therefore, if he make, endorse, or accept negotiable paper he will be held personally liable, even if he adds to his own name the name of his office signing a note; for example, 'A as executor of B;' for this would be deemed only a part of his description or will be rejected as surplusage. 1 Pars. Bills & N., 161; Lovelace *v.* Smith, 39 Ga., 130."

What, therefore, the administratrix could not do for herself as such she may not legally consent for the court to do for her. The court, like the administratrix, is but the creature of the law.

In Harrison *v.* McClelland, 57 Ga., 531, the administratrix gave a promissory note, signed "Mahalable A. Edwards, administratrix." She was sued upon it as an individual and not in her representative character, and she pleaded that it was given for a renewel of old notes made by her intestate during his life. The jury found for the defendant. Error was assigned upon this charge of the court:

302 "If you believe from the evidence that the note sued on was made and signed by the defendant as administratrix upon the estate of John P. Edwards and for no new consideration, but in lieu of certain other notes due by her intestate during his lifetime, and payable before June 1st, 1865, then she is liable, if liable at all, on such note as administratrix, and there can be no recovery against the defendant in her individual capacity."

This was held error. This case seems precisely in point, the attitude of the parties being changed. To make it fit precisely, suppose that Mrs. Lamar was sued individually upon this mortgage and she pleaded that she signed the mortgage as administratrix, in consideration of a credit of $80,000 on other notes due by her husband to Gazaway B. Lamar. This case is authority for holding that the plea would be overruled, and that the estate would be held harmless, while she would be liable as an individual. A reason for this rule would exist in the fact that had the administratrix the power to create mortgages or other debts of high dignity, she could defeat the statute of Georgia, which regulates the priority and dignity of debts against an estate. By creating a mortgage upon a debt which was an open account she might often, to defeat all
303 creditors save one, favor one creditor at the expense of another. There are many other obvious reasons which make the vigorous language of Chief Justice Warner applicable to this clearly illegal exercise of authority. The mortgage which Mrs. Lamar

executed was nothing more than a payment by her on the debt of Gazaway B. Lamar—a payment by the creation a lien upon property which she had no right to encumber for that purpose or for any purpose. In order to authorize this, the court of chancery of Chatham county interfered with the regular course of administration, which would have been for Gazaway B. Lamar to present his claims against the estate, if he had a claim, and have it determined upon its merits. To authorize her, then, to create a mortgage to pay off his debt to third persons upon the promise that he would give credit on claims which he did not present or identify was as distinct an interference with the regular process of administration as could be well imagined. It is in the teeth of the plain provision of the law of Georgia: "Equity will not interfere with the regular administration of estates except upon the application of the representative, either (1) for construction and direction, (2) for marshaling the assets, or (3) upon the application of any person interested in the estate where there is danger
304 of loss or other injury to his interest." Code, par. 3144.

Upon what part of this statute does this bill have its footing? In the first place, it is not brought by the representative, but against her. It is not for construction and direction nor for marshaling the assets, nor is it upon application of any person interested in the estate where there is danger of loss or other injury to his interest. There is no such allegation either by Gazaway B. Lamar or by the Bank of the Republic, who are the complainants. Gazaway B. Lamar, so far from apprehending any loss to his interest, had never presented an account against the estate, and, however great may have been his apprehensions, he said nothing about them in the bill so as to justify the interference of a court of equity, and this was necessary to jurisdiction if it otherwise had been proper to take it. For what equitable purpose, then, does this bill exist? It is in violation of several important rules of practice and principle in the equity jurisprudence of the courts of the State of Georgia. (1) as we have seen, it attempts to transfer to a court of equity a controversy pending in the court of law; (2) it attempts to convey by the execution of bond and mortgage the realty of persons who are not parties to it and whose interests are not represented by a party;
(3) it is an unlawful interference with the regular administra-
305 tion of the estate, in contravention of law and without excuse;
(4) it is an attempt to authorize the administratrix to do that which the law declares she may not do and which the court had no power to permit or justify. It was conceived for an illegal purpose, and it is like nothing in the heavens or the earth or the waters under the earth. Its consideration was in part upon an intangible and vague account against her husband which to this moment, so far as the proceedings here indicate, has never been ascertained, even to the extent of stating its items or amount, and the further consideration of a release of the administratrix from liability to pay a debt which not she or her husband, but Gazaway B. Lamar, was bound to pay and which, so far as this proceeding discloses, he was entirely competent to pay. The authorization of

an administrator to compromise contested and doubtful claims has no such latitude as will justify such a proceeding nor has a court of equity a power to traffic with the lands of minor children and disarrange the whole process of administration to accommodate the necessities of a third person, whose only apparent connection with the estate was an immense liability for his breach of warranty.

The bill served simply to gloss over this illegal transaction, to give to it the illusive sanction of an alleged decree, and it had
306 no other possible utility. It was perfectly plain that if Mrs. Lamar as administratrix had no right in law to mortgage the lands of the estate the action of the court could not give her the right. If she had the right to incumber the land, the action of the court could not make that right stronger. The decree, then, may be considered as eliminated from the case. It is, in the language of the law, "a mere nullity." It is true, however, that had the superior court of Chatham county, upon the averments of this bill, the jurisdiction to grant the decree upon which plaintiff relies the result of this litigation would not be materially different. The substantial question here is, Has Gazaway B. Lamar the right to recover on the mortgage executed by the administratrix and upon which this suit is brought? It is certainly a matter of grave consequence that he proposed in his bill to relieve the mortgaged premises from all demands of his, present or future, if Mrs. Lamar would execute the mortgage, and that the decree, in pursuance of this proposition, distinctly provided that the land so mortgaged "shall be henceforth entirely released from all liability for any debt which may be hereafter found due for any cause existing at or before the date of the decree from the estate to the said Gazaway B.
307 Lamar;" but this decision is not placed upon that ground. It is insisted that he has the same right to recover on this mortgage that the Bank of the Republic would have had. The court does not so understand the law. When a mortgage debt is paid by one who is bound to pay it, an assignment of it to him upon payment operates as a discharge and he will not be allowed to hold it as a subsisting incumbrance, as the payment was in pursuance of his agreement and his duty and may be regarded as made by the mortgagor's money. 1 Jones Mortg., par. 864; Brown *v.* Lapham, 3 Cush., 554; Wadsworth *v.* Williams, 100 Mass., 126; Mickles *v.* Dillaye, 17 N. Y., 80; Farwell *v.* Cotting, 8 Allen, 211; Gould *v.* Day, 94 U. S., 413; 1 Jones Mortg., 867; Mickle *v.* Townsend, 18 N. Y., 575; Collins *v.* Terry, 7 Johns., 278; Ryer *v.* Gass, 130 Mass., 227; Lappen *v.* Gill, 129 Mass., 349; 2 Devl. Deeds, pars. 1345, 1346; Burnham *v.* Dorr, 72 Me., 198; 2 Pom. Eq. Jur., p. 253, par. 796, and note to 254. Now, when Gazaway B. Lamar sold these lands to his son this mortgage, which had previously been made by the vendor and which had not been recorded, was in the hands of the Bank of the Republic, of which he, Gazaway B. Lamar, was the president.

His deed to his son makes no mention of the mortgage, but, on
308 the contrary, as we have seen, was an absolute deed of warranty. It is true that he alleged his son bought with notice of the mortgage. Conceding this to be true, it was none the less the

duty of Gazaway B. Lamar to pay the amount due upon it. Clay *v.* Banks, 71 Ga., 363; Brown *v.* Lapham, 3 Cush., 554; Gould *v.* Day, 94 U. S., 413. It was his debt and not his son's. Rawle Cov., par. 88; Dunn *v.* White, 1 Ala., 645; Harlow *v.* Thomas, 15 Peck, 70; Ladd *v.* Noyes, 137 Mass., 151; Redwin *v.* Brown, 10 Ga., 311; Leary *v.* Durham, 4 Ga., 597; Burk *v.* Burk, 64 Ga., 632; Code, par 2703; Refeld *v.* Woodfolk, 22 How., 326; Van Ransselaer *v.* Kearney, 11 How., 321; Drury *v.* Improvement Co., 13 Allen, 171; Belmont *v.* Coman, 22 N. Y., 438; Strong *v.* Converse, 8 Allen, 557; Elliot V. Sackett, 108 U. S., 132; 2 Sup. C't Rep., 375; Dawes *v.* Jackson, 9 Mass., 490. After the death of his son, Charles A. L. Lamar, and when the mortgage was levied upon the land, it was still the duty of Gazaway B. Lamar to pay it, or, if not, to respond upon his covenant of warranty to the estate. Suppose it be conceded, however, that he could not pay it—and there is no allegation in the bill that would justify this conclusion—and that Mrs. Lamar was compelled to pay it in order to preserve the corpus of the estate, Gazaway B. Lamar was still bound to recompense her. She did pay a
309 large part of it by the execution of the new mortgage to the Bank of the Republic and by subsequent payments thereon; and when Gazaway B. Lamar subsequently had that mortgage assigned by the bank to him he did nothing more than he ought to have done in the beginning towards the estate of his son; and when, through his administrator, he now seeks to enforce the mortgage against the lands of his son he is met by the conclusive proposition that as he was bound to pay it in the first instance, when he took an assignment of it to himself it was discharged. It is insisted that he was no party to the last mortgage sued on, and therefore he had the right to purchase it. The court will, however, look clear through the transaction and locate the original equity, depending upon his liability upon the first mortgage, for which this is merely the substitute; but it is insisted that G. B. Lamar had large claims against the estate of C. A. L. Lamar, which amounted to more than the liability upon his deed of warranty. This may and may not be true. The court has not been informed by any legal evidence upon that subject. It does not appear what was the amount of these claims, what was their consideration, or that they were binding upon the estate. Certainly there
310 was no claim which would authorize a court of equity to direct the administratrix to execute a mortgage for the benefit of Gazaway B. Lamar, and if his claims against the estate are ever so valid they must rest upon their merit and their dignity. Were this transaction permissible the result may be that the open accounts of Gazaway B. Lamar have been transformed into a mortgage upon the lands belonging to the heirs, and thus the regular process of administration, as we have seen, totally disarranged for the benefit and in violation of law.

The conclusion of the court is that the Bank of the Republic could not have enforced this mortgage, signed by the administratrix, against the lands of the estate, the property of the heirs of C. A. L. Lamar, other than the administratrix; that the administratrix her-

self would be personally liable to the bank upon the mortgage is undeniable. A *prima facie* case is made against her when her mortgage, with her signature and seal, is introduced. This case she is now called upon to meet. When Gazaway B. Lamar bought the mortgage he was under obligation, so far as the estate and all the heirs, including the administratrix, were concerned, to pay it off, unless he had equities against the estate, which would be
311 a sufficient reply in whole or in part to this obligation. It does not appear from the evidence now before the court that he had any demand against the heirs not parties to this bill which a court of equity could recognize in the settlement of the controversy. It is true, however, that the administratrix, without authority as such to do so, recognized the existence of indefinite claims against the estate. She did this impliedly in her answer. But this, in the opinion of the court, was not sufficient in itself. The silence of the answer upon a topic to which the bill by its terms does not seek discovery is insufficient to warrant a decree for a special amount. Young *v.* Grundy, 6 Cranch, 51; Brown *v.* Pierce, 7 Wall., 211; Story Eq. Pl., par. 852; Walker *v.* Walker, 3 Kelly, 309; 1 Daniell Ch. Pr., 837; Van Ransselaer *v.* Kearny, 11 How., 325; 3 Pom. Eq. Jur., par. 1418, and note. She did this more explicitly in her subsequent letters, which are in evidence, but not as to amounts. What the claims of Gazaway B. Lamar were—what was their consideration or amount—the court is entirely unadvised. That they were not claims which would justify the execution of this mortgage as affecting the children or their interests is undeniable, and the bill must be dismissed as to the heirs, to wit, Eliza A. Cunning-
312 ham, Jane C. Cunningham, Caro. N. Du Bignon, Georgia G. Lamar, and Mary L. Lamar; but the court is of the opinion that sufficient evidence has been adduced to order a decree against the distributive share of Caroline A. Lamar, or, if she now desires to reply to the plaintiffs' evidence, to require that an account be taken between Caroline A. Lamar and her distributive share in the estate of Charles A. L. Lamar and the estate of Gazaway B. Lamar, in order that it may be made to appear to the court whether the administrators of Gazaway B. Lamar have such equities against her distributive share as will justify a decree of foreclosure against her interest.

A decree will be framed in accordance with this decision, and the matters indicated as remaining unsettled will, if necessary, be referred to the master to take an account and to report his finding to the court.

313 UNITED STATES OF AMERICA, }
Eastern Division of the Southern District of Georgia. }

I, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the foregoing writing annexed to this certificate is a true, correct, and complete transcript of the record, as directed by law to be made, and copies of the proofs and of such entries and papers on file as may be necessary on the hearing of an appeal in the equity cause of Harriet Cazenove Jones

and Frank Cazenove Jones, administrators estate of G. B. Lamar, complainants, against Caroline A. Lamar, administratrix estate of Charles A. L. Lamar, *et al.*, defendants, lately pending in said circuit court and appealed by the complainants to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Savannah, in said division and district, this the twenty-seventh day of September, A. D. 1888, and in the 113th year of the Independence of the United States of America.

[Seal of U. S. Circuit Court, Georgia.]

H. H. KING, *Clerk*,
By S. F. B. GILLESPIE,
Deputy Clerk U. S. Circuit Court.

Endorsed on cover: S. Georgia C. C. U. S. No. 198. Harriet C. Jones and Frank C. Jones, administratrix and administrator *d. b. n. c. t. a.* of the estate of Gazaway B. Lamar, deceased, appellants, *vs.* Eliza A. Cunningham, Jane C. Cunningham, Caro N. Du Bignon, Georgia B. Lamar, and Mary L. Lamar. Filed October 9, 1888.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 198.

HARRIET C. JONES AND FRANK C. JONES,
ADMINISTRATRIX AND ADMINISTRATOR D. B. N. C. T. A. OF THE ESTATE OF GAZAWAY B. LAMAR,
Appellants,

vs.

ELIZA A. CUNNINGHAM, JANE C. CUNNINGHAM, CARO N. DUBIGNON, GEORGIA G. LAMAR, AND MARY L. LAMAR.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

BRIEF OF SOLICITOR FOR APPELLANTS.

This cause began with a bill for relief by the Appellants against the several Defendants, in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, with subpœna returnable to September Rules, 1886.

The Defendants entered their appearance Septem- 6th, 1886, and filed their joint and several answer at October Rules thereafter. Complainants filed their general replication November 1st, 1886.

After leave obtained, Defendants filed a cross bill with subpœna returnable to February Rules, 1887. Appearance was duly entered for Complainants, and their answer to said cross bill was filed April 30th, 1887. The replication to the cross bill was filed June 6th, 1887.

On April 20th, 1888, after argument had, the Honorable Emory Speer, Judge, rendered his decree dismissing said bill as to the Defendants Eliza A. Cunningham, Jane C. Cunningham, Caro N. duBignon, Georgia G. Lamar, and Mary L. Lamar.

On May 3d, 1888, an order and appeal to this Court was allowed.

See printed record, p. 47.

The purpose of the suit was to foreclose a mortgage made March 17th, 1868, by Caroline A. Lamar, as Administratrix of the estate of Charles A. L. Lamar, deceased, in favor of the National Bank of the Republic of New York, for the principal sum of eighty thousand dollars, besides interest. This mortgage was executed under the authority of a decree of the Superior Court of Chatham County, Georgia, granted March 6th, 1868.

See record, p. 65.

This mortgage, and the bond which it secured, were assigned by the National Bank of the Republic of New York, for value received, to Gazaway B. Lamar on May 7th, 1874.

Prior to the filing of said bill, Caroline A. Lamar had been discharged from her office of Administratrix, and she and her children had entered into an agreement that, while the property of said estate should be kept together undivided, each heir, as tenant in common, should own her several proportion.

Record, p. 12.

The bill was therefore brought against said parties severally, and each was called upon to account, and to

make good the lien of said mortgage as to her proportion of said estate, separately.

See record, pp. 5, 6.

The dismissal of said bill as to one or more of said Defendants was therefore final as to them. The Defendants claimed that said bond and mortgage were null and void, for the reason that the Superior Court of Chatham County had no jurisdiction to grant the decree authorizing their execution, because the children of Mrs. Lamar were not made parties to the proceeding in said Court; because Gazaway B. Lamar was under an obligation to pay said bond and mortgage to said bank, and an assignment to him by the bank operated as payment; and because under the terms of an agreement entered into February 21st, 1868, between said National Bank, said Gazaway B. Lamar, and said Caroline A. Lamar, as Administratrix as aforesaid, said Gazaway could enforce no demand against the estate of said intestate.

See record, pp. 23, 24.

The errors assigned in the decision and decree of the Judge of the Circuit Court are the dismissal of the bill as to the several Defendants named, upon the grounds as ruled, that:

First.—The Superior Court of Chatham County, Georgia, had no jurisdiction to grant said decree, and that the bond and mortgage executed and delivered by Caroline A. Lamar, as Administratrix, in pursuance of said decree, were invalid and could not be enforced.

Second.—That said Gazaway B. Lamar was under a legal obligation to pay to the National Bank of the Republic the bond and mortgage sued on, and that an assignment of the same to him by said bank operated as a payment and extinguishment, and prevented any enforcement by him or his estate.

We submit that one leading fact in this case is perfectly clear—that on January 14th, 1861, the said Gaz-

The compromise proposed, and afterwards carried out, involved a new and distinct bond and mortgage, to be executed by the Administratrix to said Bank, for the principal sum of $80,000, with interest from February 21st, 1868, payable in ten annual instalments, the old mortgage to be cancelled, and the fi. fa. issued on its foreclosure, and then levied on said land, to be made forever inoperative, and a credit to be given by said Gazaway B. Lamar on his account and claim against the estate of C. A. L. Lamar for $80,000. The difference between the amount then due on the old mortgage, and the proposed new one, was $54,485.30, which sum, by virtue of said compromise, was actually released to said estate. It received from said Bank this large pecuniary bonus, was relieved of the levy, of said fi. fa., and privileged to pay the new mortgage indebtedness in ten annual instalments.

Before considering the action of the judge below in dismissing said bill, we beg leave to refer to his decision giving his reasons for said course.

He states broadly that what the Administratrix could not do for herself as such, she may not legally consent for the Court to do for her.

Printed record, p. 143.

It is perfectly plain that if Mrs. Lamar, as Administratrix, had no right in law to mortgage the lands of the estate, the action of the Court could not give her the right. If she had the right to encumber the land, the action of the Court could not make that right stronger. The decree may then be considered as eliminated from the case. It is, in the language of the law, "a mere nullity."

Record, p. 145.

The Judge then holds broadly that in Georgia a Court of Equity cannot authorize an administrator to mortgage the land of the estate.

It was conceded that Mrs. Lamar, as Administratrix, did not possess power to mortgage the land of her

intestate's estate; the very purpose of the proceedings had in the Superior Court of Chatham County, Georgia, was to obtain that power for her.

See record, p. 58, bottom; p. 63, top.

The question then arises, did that Court have power to authorize the mortgage? It will be observed that the Judge below does not impute inability to the Court by reason of irregularity in the procedure, but denies broadly the power to grant such a privilege.

A guardian in Georgia is inhibited from creating any lien on his ward's property.

Code, §1837.

There is no such special inhibition as to an administrator. But the Code declares that trustees are not authorized to create any lien upon the trust estate, except such as are given by law.

Code, §2335.

Taylor & Co. vs. Clark, 56 Ga., 309.

Administrators are included in this general classification.

In the late case of Bolles vs. Munnerlyn, decided at October term, 1889, the Supreme Court of Georgia held that the Judge of the Superior Court, as Chancellor, could authorize a trustee to mortgage the land held by him in trust.

83 Ga., 728, 733 (3).

In Iverson et al. vs. Saulsbury, Respass & Co., 68 Ga., 790, the Court held that a Chancellor sitting at Chambers had no power to grant authority to a trustee to mortgage a trust estate; but the Court added, we do not decide that a Court of Chancery in term might not grant authority to encumber a trust estate.

It will be remembered that in the case at bar the authority was conferred during a regular term of the Court, upon bill, answer, exhibits and proofs, and a finding of the facts by a jury.

In Weems, Trustee, vs. Coker, the preceding judgment was reversed, and a Chancellor was held compe-

away B. Lamar did execute and deliver to the Bank of the Republic of New York his bond, and a mortgage on the lands in question to secure the same, for the sum of $164,000, conditioned for the payment of $82,000 on demand; that at the time of the execution of the same, the said Gazaway B. Lamar was the unquestioned owner of said land, and had the right to encumber said property, and that the said land did thereby become burdened with a valid lien for said amount. Said mortgage was subsequently foreclosed by said bank, and an execution issued on foreclosure was levied upon the land.

These facts are stated clearly in the bill, and also in the bill filed against said Administratrix in the Superior Court of Chatham County, and are explicitly admitted to be true by said Administratrix in her sworn answer to the bill last mentioned.

See record, p. 62.

The claim interposed by said Administratrix to the land so levied upon by said bank, was based upon a conveyance of the same by said Gazaway B. Lamar to her intestate, C. A. L. Lamar, by deed dated December 31st, 1863, subsequent to his execution of said bond and mortgage.

See record, p. 22.

Said claim could have been sustained only by proof that at the time of said conveyance her intestate had no notice or knowledge of said mortgage. The Code of Georgia provides that, mortgages not recorded within the time required, remain valid as against the mortagor, but are postponed to all other liens created or obtained, or purchases made, prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or the purchaser has the like notice, then the lien of the older mortgage shall be held good against them.

Georgia Code of 1882, Section 1957.

If, then, the intestate of Caroline A. Lamar, Administratrix, had notice of the prior mortgage, her claim would necessarily fail. On the trial of the issue made by the bill filed against her in the Superior Court of Chatham County, the jury, on March 6th, 1868, found that her intestate had full notice of said previous mortgage.

Record, p. 65.

It is safe, then, to assert that had the issue been tried upon the claim, the lien of the mortgage would have prevailed against said land, and that at and before the date of the compromise effected, the Bank of the Republic, of New York, held a valid and enforceable lien upon the land of C. A. L. Lamar for the principal sum of $82,000, with interest thereon from January 14th, 1861, to the date of the compromise effected March 6th, 1868, amounting to the further sum of $40,259.37, besides the costs of foreclosure, including the attorney's fees and commissions on above amounts, the customary charge being 10 per centum, which was $12,225.93, making the total sum then due on the foreclosed mortgage $134,485.30.

See record, p. 65.

This amount largely exceeded the value of the mortgaged property, according to its value as estimated in the family agreement referred to, where it was placed as worth $80,000.

See record, p. 13.

The sale of said land under said foreclosure would have swept away the estate of C. A. L. Lamar, and left nothing for his widow and children. In this position of affairs, the National Bank of the Republic, "in a spirit of fairness and conciliation," proposed to Mrs. Caroline A. Lamar, as Administratrix, the compromise which she accepted, and which the Superior Court of Chatham County decreed.

See record, p. 58.

tent, even at Chambers, to grant authority to mortgage a trust estate.

70 Ga., 746.

In this last case, the Court held that the power to allow a sale includes a power to allow a mortgage. Attention is called to this point, as most of the Georgia decisions rest upon the power to authorize a sale.

In Dean, Executor, vs. The Central Cotton Press Co., 64 Ga., 670, a leading case in Georgia, an executor filed an ex parte bill in the Court of Chancery for leave to sell a piece of property of the estate; certain relatives were interested under the testator's will, and an infant child then in life, and neither were made parties; the Court held that the proceeding was irregular, but not void, and that the decree authorizing a sale could not be collaterally attacked (p. 673).

In Knapp vs. Harris, 60 Ga., 398, a record of the Superior Court of Chatham County, containing a decree authorizing the administratrix to mortgage a part of the property of the estate, was offered in evidence, and objected to as illegal. The Court below admitted the record and the Supreme Court affirmed its ruling (pp. 400, 404).

This decision is exactly in point. In the statement of the case it is said that the only object in introducing said record was to show the authority for the mortgage (p. 400, bottom); so that the judgment of the Supreme Court distinctly adjudicates the right of a Court of Chancery in Georgia to empower an administratrix to give a mortgage upon the land of the estate.

In Sharp, Adm'r, vs. Findley, 71 Ga., 654, an administrator, with others, presented a petition to the Chancellor in Chambers asking authority to sell certain land (pp. 657, 658); the Supreme Court held that although the proceeding was irregular, it was not void (p. 668 (4), and sustained the decree allowing the sale.

We therefore submit, in view of the express decisions cited, that a Court of Chancery in Georgia has full authority to empower an administratrix to execute a mortgage binding upon the estate she represents. Until the decision of the Judge of the Circuit Court to the contrary, we are not aware that such authority has ever been questioned.

The several decrees in the cases above referred to were rendered before the Georgia Code went into operation.

This Code greatly enlarged the powers of the Court of Chancery and of the Chancellor, and these have been interpreted by subsequent decisions.

The statute declared that all proceedings ex parte, or in the execution of the protective powers of Chancery over trust estates, or the estates of the wards of Chancery, may be presented to the Court by petition only, and such other proceedings be had therein as the necessity of each cause shall demand.

A Court of Equity is always open, and hence the Judge in vacation and at Chambers may receive and act upon such petitions, always transmitting the entire proceedings to the Clerk to be entered on the minutes or other records of the Court.

Code of 1882, §§4221, 4222.

These provisions avoid the necessity of filing a regular bill, and allow the Chancellor to take such proceedings as the necessity of each case shall demand. The Chancellor must judge of such necessity.

In the case at bar, he submitted the questions involved to a jury, and took their verdict, and then rendered his decree upon bill, answer, exhibits and proofs.

In Sharp, Adm'r, vs. Findley, already referred to, 71 Ga., 663, the petition of the executor was treated as at Chambers, but the Judge called in a jury at term to pass upon the facts, and the Supreme Court

held this did not vitiate but strengthened the decree, (p. 668 (4).

Our Supreme Court has held in several cases since the Code, that the Superior Court, sitting as a Court of Chancery, has jurisdiction to grant a decree for the sale of land, if the estates of Wards of Chancery are involved.

Any minor having an interest in such land is a Ward of Chancery.

In White vs. Dinkins, 19 Ga., 289, the Court say, the Chancellor was by virtue of his office the guardian of the infants.

In Dean vs. The Cotton Press Co., 64 Ga., 675, the Court recognized the infant life tenant as a Ward in Chancery, although he was not made a party to the Executor's petition.

In Iverson, Trustee, vs. Saulsbury, Trustee, 65 Ga., 729, the Court say, that in the exercise of these great powers, Chancellors should see that their Wards are protected. See, to same effect, Ansley, Trustee, vs. Pace, 68 Ga., 406.

In Sharp, Adm'r, vs. Findley, 71 Ga., 665, the Supreme Court sustained the jurisdictton of the Court of Chancery on the ground that the estate of wards of Chancery was involved under Code, §4221. The Court say, that just as soon as the fact was disclosed that the land of infants was involved, his wards were before him, and the case was concerning "an estate of the wards of Chancery" (p. 665, end).

In the case at bar, the children of Caroline A. Lamar were minors when the decree of 1868 was taken; as late as the date of the family agreement, July 27th, 1882, Mary Lamar was represented by T. M. Cunningham as her guardian.

Record, pp. 12, 13.

These children were not made formal parties to the bill filed, or formal Defendants. In Dean, Executor, vs. Cotton Press Co., 64 Ga., 670, the infant life ten-

ant was not made a party, but was recognized by the Court as a ward in Chancery (p. 675).

The bill filed in Chatham Superior Court, and the answer of Caroline A. Lamar, both refer to the estate of C. A. L. Lamar, and the jury in their verdict find that it will be to the benefit of said estate to compound the mortgage debt as proposed. It was well known to the Chancellor and the jury that C. A. L. Lamar left children who were interested in said estate.

On February 21st, 1868, an agreement was entered into between the National Bank of the Republic of New York, G. B. Lamar, and Caroline A. Lamar, as Administratrix, (attached as Exhibit B to answer of Defendants, record, p. 23), providing for the application for the decree to Chatham Superior Court; that said Caroline A. Lamar should waive her right of dower in the land, and providing for securing the property to Mrs. Lamar *and her children.* The decree subsequently granted, incorporated the terms of this agreement, and the Chancellor must necessarily have known that the interests of the children, as well as the interest of their mother, was to be protected. This agreement was doubtless one of the "proofs" recited in said decree

But whether the Chancellor was formally notified or not that minor children had an interest in the estate of C. A. L. Lamar, if they did in fact have such an interest, we submit that the Chancery Court did have jurisdiction under Code, §4221, to authorize the execution of the mortgage, if, as advised by the jury, he deemed it best for said estate.

It is contended, however, that the children of Mrs. Lamar were not made parties to said proceedings, and are therefore not bound by the decree.

The Judge below, in rendering an opinion on the case, declared that it was "the case of a trust estate."

Printed record, p. 86.

He doubtless based his judgment upon this view.

We submit that in Georgia there is a special law for trust estates very different from the law for legal estates. The estate of C. A. L. Lamar was a pure legal estate, and there was no trust connected with it. The deed to the land in question was to C. A. L. Lamar and his heirs and assigns, free from any trust.

Record, p. 22.

Upon his death, the law cast it upon his legal heirs, and they acquired it as a pure legal estate. On February 20th, 1854, the Legislature of Georgia passed an Act allowing a Judge at Chambers to pass orders in reference to trustees, and the sale or division of trust property, where all parties in interest are represented and consenting.

Acts 1853–4, pp. 59, 60.

In Hill vs. Printup, 48 Ga., 452., the Supreme Court held that under this Act persons interested in the trust estate must all be made parties to any proceeding. The Court held that said Act applied only to technical trust estates, and that an administrator of a legal estate could not procure under it an order of sale.

Milledge vs. Bryan, 49 Ga., 397.

Knapp vs. Harris, 60 Ga., 398.

It has never been supposed that the administrator of a legal estate is obliged to unite the heirs at law with him in proceedings connected with said estate. The administrator represents the heirs, and they act through him. The estates of deceased persons in Georgia are usually administered in the Court of Ordinary; in that Court, the administrator proceeds in his own name, and does not make the heirs parties.

In Beall, Executor, vs. Blake, 16 Ga., 119, our Supreme Court lay down the general rule that in a bill against an executor it is not necessary that the legatees should be parties, and in the opinion on page 136 (3), the Court say: This being a suit against an executor, legatees were not necessary parties to it.

They were represented by him. This is the general rule.

The foreclosure suit in the Superior Court by the Bank of the Republic was against Caroline A. Lamar, as Administratrix, alone; her children were not made parties to it; she did not unite them with her in the claim she interposed for the property; yet no one could question the legality of said proceedings.

In the agreement of February 21st, 1868, which led to the bill and decree, the children of Mrs. Lamar were not made parties; yet they do not undertake to repudiate said agreement on that ground, but claim rights under it.

In Redd, Trustee, vs. Davis, 59 Ga., 828, the Court held tha tthe trustee, the sole defendant, represented all the parties in interest, and that judgment against him would not become dormant as to the beneficiaries, and the Court refer to 16 Ga., 119, cited above.

In Dean vs. Central Cotton Press Co., 64 Ga., 675, the Court held that the executor represented even an unborn legatee.

The Court made a similar ruling in Ansley, Trustee, vs. Pace, 68 Ga., 406, end.

In Wilkinson, Guardian, vs. Tuggle, 61 Ga., 384 (2), plaintiffs objected to the admissibility of a record upon the ground that they were not parties to the suit, and therefore were not bound by the decree, but the Court held that the executor being made defendant to the bill which he answered, represented the legatees and devises and bound them.

In Barclay vs. Kinsey, 72 Ga., 725, 2, b., decided May 13th, 1884, the Supreme Court held that an administratrix having been a party to a bill, and consented to a decree thereunder, the distributees of the estate, whether minors, married women, or adults, were represented by her, and, in the absence of collusion between her and the other parties, were bound by the decree (p. 738, end). This case seems exactly in point.

The Code of Georgia expressly provides that administrators are authorized to compromise all doubtful debts belonging to estates, where such settlement will advance the interests of those represented.

Code, §2539.

Represented by whom? By such administrators, of course. It is plain, therefore, that such a compromise would be valid without joining the heirs as parties.

It does not seem necessary to multiply authorities on this point.

The Judge below, in giving his reasons for dismissing said bill, among other things, says that the Code of Georgia, which controls this Georgia case, is plain and simple in its mandate; where law and equity have concurrent jurisdiction, the Court first taking it will retain it, unless good reason be shown to the contrary.

Code of Georgia, §3096.

See printed record, p. 140, bottom.

We submit that this is only a rule for regulating the comity of Courts; it does not touch the jurisdiction. If a case is progressing in one Court that has jurisdiction of it, it will not, on application of counsel, be sent to another Court.

See Hall vs. English, 47 Ga., 511.

Griffin vs. Shetoe, 30 Ga., 300 (4).

And a Court may punish a suitor who attempts to evade its acquired jurisdiction by going into another Court.

Hines & Hobbs vs. Rawson, 40 Ga., 356.

But if two Courts have concurrent jurisdiction, the misconduct of a suitor cannot deprive either of its jurisdiction.

See Hardeman & Sparks vs. Battersby, 53 Ga., 36.

The National Bank of the Republic brought suit on the common law side of the Superior Court of Chatham County, against Caroline A. Lamar, as Ad-

ministratrix of C. A L. Lamar, to foreclose a mortgage. It does not appear that she made any defense. The bank obtained judgment, caused execution to issue, and levied it upon the mortgaged premises. Mrs. Lamar, as Administratrix, then interposed a claim for the land; the only issue made by this claim was whether or not the land was subject to the mortgage, and this depended upon whether or not her intestate had notice of the mortgage when he purchased the land. At this juncture the parties entered into an agreement to effect a compromise, and to apply for a decree on the equity side of said Court.

Printed record, p. 23.

The pendency of a claim could not affect in any way the power of the Court on its equity side, to decree a compromise; Mrs. Lamar, on the common law side of the Court, had not filed any pleadings of an equitable nature, or asked for a compromise; it was not involved in her claim. The Court on its equity side first acquired, and alone had, jurisdiction of the compromise and new questions made by said bill, It was a mere matter of form, which a Court of equity would disregard, whether she or the Bank of the Republic filed the bill; she consented that it be applied for in the agreement of February 21st, 1868; and the Judge of the Circuit Court, in his opinion, says, that the said Administratrix practically consented to the exercise of this jurisdiction.

Printed record, p. 141.

It certainly, then, does not lie in the mouth of the Administratrix, or of those she represented, to deny the jurisdiction of the Court to grant said decree.

See State vs. Gaskill, 68 Ga., 520, where Defendant was held estopped from attacking the validity of a judgment taken by consent.

See Herman's Law of Estoppel, §59, p. 56.

Evans vs. Birge, 11 Ga., 265.

The Judge below, in his opinion, quotes Section 3144 of the Code of Georgia, to the effect that equity will not interfere with the regular administration of estates, except in certain specified cases. But again, we submit, that this only lays down a rule for the conduct of Courts, and does not touch the question of jurisdiction. We propose to show, clearly, that in Georgia, equity has concurrent jurisdiction with the Courts of Ordinary in the administration of estates. If equity in any case should improperly inferfere, this would not oust its jurisdiction.

But equity could properly interfere in this case: the Administratrix appealed to equity in her answer; she needed direction as to said levy of the mortgage fi. fa. The adjustment of this large lien upon the estate was equivalent to the marshaling of the assets. She was largely interested in said estate, was in danger of loss and injury to her interest, and had a right to apply for assistance. Whether she invoked the needed aid by way of bill or answer, could not affect the jurisdiction or impair the power of the Court to assist her.

We submit, that since the adoption of the Georgia Code, January 1st, 1863, a Court of Equity in Georgia had concurrent jurisdiction with the Court of Ordinary in the administration and distribution of estates.

C. A. L. Lamar having died, and the law having cast his real estate at his death upon his heirs at law, it became the duty of his Administratrix to settle the accounts of said estate and distribute the property.

She found the estate covered by the lien of a mortgage that would absorb it almost entirely. At this juncture a settlement of accounts was proposed by the largest creditors, and she submitted the proposition to a Court of Equity for direction.

Section 2600 of the Code of Georgia, declares that a Court of Equity shall have concurrent jurisdiction over the settlement of accounts of administrators.

In the late case of Barclay vs. Kinsey, already cited,

the Supreme Court say that the Court of Equity of Habersham County had jurisdiction concurrently with the Court of Ordinary, both of the subject matter and parties, is evident from §2600 of the Code.

In Ewing vs. Moses, 50 Ga., 264 (2) the Court say this concurrent jurisdiction is specially retained by §2600 of the Code.

In Dean vs. Central Cotton Press Co., 64 Ga., 674, the Supreme say: "it has ever been held in Georgia, so far as we know or are advised, that the jurisdiction of Chancery was co-ordinate with the Ordinary's on the matters of distribution of estates.

McGowan, Ex'tor, vs. Lufburrow, 82 Ga. 523 (1).

We further submit that, in order to displace the lien of the original mortgage, and to execute a new one for a much smaller amount, binding upon the estate, the Administratrix was obliged to resort to a Court of Equity. The Court of Ordinary had no jurisdiction to grant this authority. The Superior Court, on its common law side, possessed no such power, because no equitable relief had been sought there by either party, and the only issue pending was the levy and claim, which was strictly a legal issue.

See Fannin vs. Thomasson, 45 Ga., 533.

Equities may be adjudicated in a claim case, but the pleadings must be framed accordingly.

See Hamberger vs. Easter, et al. 57 Ga. 71 (2) end.
Gormerly vs. Chapman, 51 Ga. 421 (1).

The Judge below lays no stress upon the irregularity of the proceedings resulting in the decree of 1868, but that point was urged by counsel for defence. If, however, the Court has jurisdiction of the parties and the subject matter, our Supreme Court has conclusive-

ly settled that mere irregularities cannot affect the validity of the decree, or subject it to collateral attack.

See Dean, Ex'tor, vs. Central Cotton Press Co., 64 Ga., 670, 673, 674.

Sharp, Admin'r, vs, Findley, 71 Ga. 668 (4).

Stanford & Golden vs. Bradford, 45 Ga. 97.

McGowan, Ex'tor, vs. Lufburrow, 82 Ga. 534 (4).

It is apparent that the Judge below, in reaching his conclusion to dismiss the bill, first concluded that the decree of 1868 was improvidently granted by the Chancellor, and upon insufficient evidence.

He says that the Superior Court, when it passed upon this matter, never looked into it at all.

Printed record, p. 88.

Again, it is perfectly evident from the entire transaction, that it was effected sub silentio; that no evidence was presented that the estate of C. A. L. Lamar was indebted to Gazaway B. Lamar.

Printed record, p. 138.

All this may be true, and yet if the Chancery Court had jurisdiction of the parties and subject matter, as it clearly had, the method of reaching its conclusion cannot now be reviewed, and the decree is safe from such attack. If any principle at all is settled in the law, it is that all the presumptions, where the Court has jurisdiction, are in favor of the decree and the correct conduct of the Judge. After the lapse of so many terms, the decree could not now be attacked even in the Court which rendered it; and it would be a singular perversion of justice if a decree granted in one Court could be reviewed and set aside in another Court because the evidence in the former was insufficient in the judgment of the latter to waarant it.

The Georgia Court may have acted unwisely and improvidently, upon insufficient evidence, or without evidence, and may have reached an erroneous conclusion; but such matters cannot now impair the validity

and oligation of the decree if the Court had jurisdiction, and there was no appeal.

Kelseys & Halstead vs. Wiley, Parish & Co., 10 Ga., 371 (2).

Preston vs. Clark, 9 Ga., 244.

Doe vs. Roe, 30 Ga., 961, 963.

Jones & Alford vs. Tarver, 19 Ga., 279 (4).

Rust vs. Garmany, 36 Ga. 257.

Rogers vs. Evans, 8 Ga., 143 (2).

Crutchfield vs. State, 24 Ga., 335.

After a judgment is rendered, it cannot be subsequently altacked by evidence showing that the Judge ought not to have rendered it.

See cases cited above.

Fort, Administrator, vs. Strohecker, 58 Ga. 263.

All acts done under a valid judgment are valid.

McDonald vs. LeRoy Napier, 14 Ga. 89 (3) 99 (3).

If the decree authorizing the execution of the bond and mortgage by the administratrix was valid, then the bond and mortgage were valid, unless invalidated for some other reason.

The Superior Court of Georgia was satisfied to render said decree upon the case made before it. The Defendants sought in another Court to attack said decree collaterally, and to impugn its validity unless certain facts were proved, which must now be presumed to have been proved, or that the Superior Court did not consider the proof of them essential. The suggestion is that this decree, when relied upon in another Court, must be treated as inoperative and invalid until certain extrinsic facts are established.

We respectfully submit that such a claim is unheard of, and that no judgment of any Court could prevail if subject to such collateral attack. Any one producing an apparently valid judgment in another Court could be met by the plea that it was rendered upon insufficient or illegal evidence, and that it could not stand until its holder produced the original evidence offered or deemed essential, and retried the entire case.

We submit that a judgment valid on its face proves itself, and cannot be collaterally attacked. All the presumptions of law are in its favor. Any other rule would unsettle the very foundations of the law.

We had heretofore supposed these principles to be elementary and familiar.

See Code of Georgia, §3593–3828.
Rodgers vs. Evans, 8 Ga. 143 (2).
Crutchfield vs. State, 24 Ga. 335.

In Cooper vs. Reynolds, 10 Wallace 308, this Court say: "It is an axiom of the law, that when a judgment of a Court is offered in evidence collaterally in another suit, its validity cannot be questioned for errors which do not affect the jurisdiction of the Court that rendered it.

In said decree of March 6th, 1868, it was provided that Gazaway B. Lamar should give credit to the estate of the said Charles A. L. Lamar for the sum of $80,000, as paid on the twenty-first of February, 1868, upon any and all claims he might have or assert against said estate.

Record, p. 67.

This was not a condition precedent to the validity of said decree, but resulted from it and was to be done in execution of it. Whether or not said G. B. Lamar gave such credit might become important in the adjustment of accounts, but could not in any manner influence the validty of said decree as rendered. Yet the Judge below treated it as a condition precedent, and required the Complainants to prove that said credit had been given. He then proceeded much further, went behind the decree, and required Complainants to prove, in order to sustain said decree, that at the time the estate of C. A. L. Lamar was actually indebted to G. B. Lamar to the amount of $80,000. This, we submit, was a clear attempt to affect the validity of the judgment of a Court by the introduction of extrinsic evidence.

The decree recited upon its face, over the signature of the Chancellor, that the cause came on to be heard upon bill, answer, exhibits and proofs. What right had any other Court to challenge those proofs, and to require the parties relying upon said decree to establish the sufficiency of said proofs. We submit that the quality of the proofs was a question for the Court that rendered the decree alone.

If it had been necessary to show that the estate of C. A. L. Lamar at the time was largely indebted to G. B. Lamar, there was ample evidence to establish that fact.

The bill proposed a compounding of the existing mortgage indebtedness, and a compromise, and distinctly asserted as part of said proposition, that the estate of C. A. L. Lamar was to be credited with the sum of $80,000 on account of any claims of the said G. B. Lamar against said estate of C. A. L. Lamar, which claims the said G. B. Lamar avers to be much greater than the said sum of $80,000.

This averment was an essential part of the offer of compromise. The sworn answer of Caroline A. Lamar, as Administratrix, admits said offer of compromise as set forth in said bill. This clearly admits Mr. G. B. Lamar's claim of indebtedness.

Record, p. 63.

The Judge, in his opinion, says that the Administratrix did recognize the existence of indefinite claims against the estate.

Record, p. 147.

Must a settlement and compromise have been deferred until the precise amount of such claims could be ascertained? Was not the quality of doubt a strong ingredient of the compromise?

On December 4th, 1866, more than a year before the compromise was effected, Mrs. Lamar wrote to G. B. Lamar that the indebtedness of her husband's estate to him brooded like a horrid nightmare over her.

Printed record, p. 101.

On May 23d, 1881, she wrote to DeRosset Lamar, Executor of G. B. Lamar, that the mortgage she had executed was for the joint and equal indebtedness of her husband and G. B. Lamar to the Bank of the Republic for moneys borrowed on account of a guano speculation.

Record, p. 103.

It does not then seem possible to question the fact that the estate of C. A. L. Lamar was largely indebted to Gazaway B. Lamar.

The Judge below, in summing up his reasons for holding that the decree was void for want of jurisdiction, says:

(1) That it was an attempt to transfer to a Court of Equity a controversy pending in the Court of Law.

We hope we have shown that the controversy pending in the Court of Law was totally distinct from the question submitted to and decided by the Court of Equity.

(2) It was an attempt to convey by bond and mortgage the realty of persons not parties, and not represented by a party.

A mortgage in Georgia conveys nothing; it is not a conveyance, but a mere lien on the property.

Code of Georgia, §1954.

All parties interested in the estate of C. A. L. Lamar were represented by his Administratrix.

(3) It was an unlawful interference with the regular administration of the estate.

We hope we have shown that it was not an interference, and, if it was, that it was allowable.

(4) It was an attempt to authorize the Administratrix to do what she could not do, and what the Court had no power to permit.

We refer to the Georgia decisions cited.

We submit further, that said decree, and the bond and mortgage executed in pursuance of it, were valid and binding on the ground of compromise. The Bank

of the Republic, of New York, and Gazaway B. Lamar, who held the largest claims against the estate of C. A. L. Lamar, proposed a compromise, which the Administratrix was willing to accept if thereto empowered by the Court. A bond and mortgage, to be executed by her as Administratrix, formed a part of this compromise, and having no power to execute them, she was obliged to apply to a Court of Equity for authority.

The Judge below concedes that administrators have authority to compromise all contested and doubtful claims for or against the estate they represent, but says they must act legally, and cannot give a mortgage for such purpose.

Printed record, p. 142 (bottom).

This is true, and for that reason the Administratrix sought authority in a Court of Equity; the Judge says a Court of Equity in Georgia could not confer such authority.

Courts favor family compromises of doubtful rights when fairly made.

Jones vs. Fulwood, 12 Ga., 121.

Courts of Equity will give effect to agreements of compromise of conflicting claims, especially when they partake of the nature of family arrangements.

Smith vs. Smith, 36 Ga., 191, and cases cited.

Here the parties had made an agreement for compromise (Record, p. 23), and they then asked the Court of Equity to carry it into effect.

The Code of Georgia expressly allows administrators to compromise all contested or doubtful claims for or against the estates they represent.

Code, §2537,

The mortgage foreclosed against the estate of C. A. L. Lamar, when she interposed her claim, became a contested and doubtful demand. Doubt existed as to the amount of indebtedness due by the estate to G. B. Lamar. So that the very case existed which the Code provided could be settled by compromise.

If the compromise and settlement required the sanction of the Court of Ordinary, the jurisdiction of the Court of Chancery to sanction and order the compromise was co-ordinate.

See Dean, Ex'r, vs. Cotton Press Co., 64 Ga., 674, and cases already cited.

The estate of C. A. L. Lamar, as shown, was saved $54,485.30, the difference between the amount due on the old mortgage, as found by the jury, and the amount of the new mortgage; and the indebtedness due G. B. Lamar was fixed at $80,000, which was credited, and a provision inserted in the decree that he could enforce no further demand then existing against the estate of his son. If it was not certain, and was not established to the entire satisfaction of Court and jury, how much the estate of C. A. L. Lamar was indebted to G. B. Lamar, there at least existed a claim of large indebtedness. The assertion of such claim made it a matter of dispute, and compromise is an agreement made between parties as a settlement of matters in dispute between them.

1 Bouvier's Law Dic., p. 308.

A compromise so made is binding on both parties.

Code of Georgia, §2882.

The compromise certainly bound G. B. Lamar; he was obliged to give, and did give, a credit for $80,000, and surrendered any other demand he then had against the estate of C. A. L. Lamar. Upon what principle or equity should that estate be released from its obligation to fulfil the compromise?

In Morris vs. Munroe, 30 Ga., 630, the Supreme Court held that where parties had conflicting claims based upon a point of law, and they effect a compromise, each is bound by the settlement whether the point of law turns out for or against him.

The decree sanctioned the compromise, which cancelled the old mortgage, and freed the estate of C. A. Lamar from its lien. All the presumptions were in

favor of said decree; that the rights of all parties were duly investigated and protected, and that the Chancellor was satisfied that the estate of C. A. L. Lamar was largely indebted to G. B. Lamar, or at least that he had sufficient ground for the assertion of such a claim. The decree accomplished a compromise and full settlement to date of all questions in dispute, and established a new point of departure. It was the duty of the Chancellor to satisfy himself as to the facts and the propriety of the decree, and the presumption is that he did so.

See White vs. Dinkins, 19 Ga. 289.

Lindsay vs. Lindsay, 28 Ga. 170.

It was insisted that, under the terms of the agreement and decree, Gazaway B. Lamar could not enforce said mortgage, or any other claim, against the estate of C. A. L. Lamar. The Judge below refers to this point, but says that his decision is not placed upon that ground.

See printed record, p. 145.

We submit that the decree itself makes this perfectly plain; it provided that said Gazaway B. Lamar should give credit to the estate of C. A. L. Lamar for $80,000 as paid February 21st, 1868, and that the property mortgaged by virtue of said decree should be thenceforth entirely released from all liability for any debt which might be thereafter found due for any cause existing at or before the date of said decree from the said estate of C. A. L. Lamar to the said Gazaway B. Lamar; and that no judgment which might thereafter be rendered in favor of the said Gazaway B. Lamar against the said estate, *upon any claim set up by him, for any cause existing at or before the date of said decree*, should bind or have any lien on the said property.

Record, p. 67.

Said decree was rendered March 6th, 1868. The bond and mortgage made in pursuance of it by Caro-

line A. Lamar, Administratrix, were executed March 17th, 1868.

See record, pp. 6, 7.

They did not constitute a claim against the estate of C. A. L. Lamar at the date of said decree, or until March 17th, thereafter. It is plain that they were not included in the claims which the decree debarred said G. B. Lamar from entertaining or enforcing. The National Bank of the Republic had a perfect right under said decree to collect them, and could assign that right to G. B. Lamar, or any other party. The mortgage was not assigned to said G. B. Lamar until May 7th, 1874. (Record, p. 55.) He then for the first time acquired said claim. The agreement between the parties, proposing that a decree should be taken, was merged in said decree, which expressed clearly the final understanding between said parties.

It was further contended, that the Administrator of G. B. Lamar could not enforce said mortgage against the estate of C. A. L. Lamar, because G. B. Lamar, in his Deed of December 31st, 1863, had warranted the title to said land, and the lien of the mortgage given by him in 1861 was a breach of said warranty. The jury expressly found that C. A. L. Lamar had received said conveyance with full notice of the previous mortgage. Printed Record, p. 65.

In Skinner vs. Moye, trustee, 69 Ga., 476, the Supreme Court of Georgia held that where there are liens on land, or any defect in the title, known to the party purchasing, a general warranty is not presumed to cover such defects unless expressly so intended (p. 480 (1).

But we submit that it is perfectly clear that if a lien upon land is paid off or extinguished before its enforcement, and there is no eviction or injury to the owner of the land,, the mere prior existence of such lien could not constitute any defence or counter claim. The said lien caused no loss or damage whatever to

the estate of C. A. L. Lamar. It was extinguished by the decree of 1868. After said decree, if the decree was valid and binding, had Mrs. Lamar, as Administratrix, sued the estate of G. B. Lamar for breach of warranty, it is apparent that she could have proved no damage, and could have recovered nothing. If she cannot recover directly, she cannot set up said lien by way of defense or counter claim.

The decree provided that the Bank of the Republic should deliver to Mrs. Lamar, as Administratrix, to be cancelled, the said mortgage given by G. B. Lamar, and should return to the office of the Clerk of said Court the execution issued on foreclosure, there to remain forever inoperative and of no effect.

Printed record, pp. 66, 67.

If, therefore, said decree had any validity, it extinguished said mortgage lien, which thereupon ceased to be an incumbrance upon said property. It became inoperative and of no effect before the new mortgage was executed by Mrs. Lamar, and could not constitute any sort of defense to the same. After said decree, neither the Bank of the Republic, nor its assigns, could enforce said mortgage against the land, or evict the owners therefrom.

In McDonald vs. Beall, 52 Ga., 579, our Supreme Court held actual eviction, or evidence of legal paramount title, amounting to eviction, necessary. The Defendants could not possibly furnish such proof, since the decree of 1868 in defence of the new bond and mortgage.

See 4 Kent's Com. 471 top p. 555. Note a.

In Martin vs. Atkinson, 7 Ga., 228 (3), the Supreme Court held that a vendee who takes up an outstanding incumbrance to protect his title, is entitled only to be refunded the amount paid out.

In this case the Administratrix was put to no expense to relieve the land from the lien of the mortgage; it was cancelled and extinguished by the decree. She

paid the debt of the estate to G. B. Lamar by paying the amount agreed upon to his creditor, the National Bank of the Republic, of New York, in the form of a new bond and mortgage.

It was furthor contended, that when Gazaway B. Lamar, in 1874, purchased from the National Bank of the Republic the new mortgage, and had it assigned to him, it became at once paid and satisfied in his hands, he then being under an obligation to pay it. The Judge below, in his opinion, says that even if the Superior Court of Chatham County had jurisdiction to grant the decree, the result of the litigation would not be materially different; that when a mortgage debt is paid by one who is bound to pay it, an assignment of it to him, upon payment, operates as a discharge, and he will not be allowed to hold it as a subsisting incumbrance, as the payment was in pursuance of his agreement and his duty, and may be regarded as made by the mortgagor's money. See printed record, p. 145.

We submit, however, that this principle, and the authorities cited, apply only where the party is under a valid obligation to pay the particular instrument which he pays and has assigned to himself.

Was G. B. Lamar under any obligation whatever to pay to the National Bank of the Republic of New York the bond and mortgage made to said Bank in 1868 by Caroline A. Lamar as administratrix.

On January 14th, 1861, G. B. Lamar executed his bond and mortgage in favor of the Bank of the Republic of New York for $82,000, with interest thereon. The new bond and mortgage of 1868 were not in renewal in the old bond and mortgage, but were entirely distinct therefrom. The old mortgage was for $82,000, withinterest from January 14th, 1861. The new was for $80,000, with interest from February 21st, 1868. One was made by G. B. Lamar to G. B. Lamar, as President of the Bank of the Republic; the other was

made by Caroline A. Lamar, as Administratrix, to the National Bank of the Republic. The first mortgage covered the press, wharf and warehouse, ; the second covered said property and seventy-five acres of land in addition. The new mortgage was not a renewal or continuation of the old mortgage, but a new and distinct contract, creating a complete novation.

By the decree of 1868, the old mortgage was cancelled and annulled, and the fi. fa. issued on foreclosure made forever inoperative. The said bank was required to give credit to said G. B. Lamar for the sum of $80,000, as paid February 21st, 1868. This was a payment of said amount on the obligation held by said bank, and cancelled the debt of G. B. Lamar to it. The new mortgage was not for a debt due by G. B. Lamar to said bank, for that had been paid ; the new bond and mortgage were a compromise, under the decree, with said bank of a valid lien for a much larger amount held by said bank on the land of said estate. If said decree had any validity or force, G. B. Lamar paid to said bank $80,000 on his indebtedness, and was credited with said payment by said bank. If, as decided by the Judge below, G. B. Lamar became liable to pay the new bond and mortgage also. then his indebtedness to said bank would amount to $162,000 outside of interest. It was never claimed that his indebtedness to said bank exceeded $82,000.

See recital in Mortgage, printed record, p. 59.

We submit, then, that it is mere assumption to say that G. B. Lamar became bound for the new bond and mortgage, and that when he paid them and took an assignment, he merely paid his own debt. The best test is—could said bank have sued him, or compelled him to pay said new bond and mortgage, or any part thereof. The bank, under the decree, credited him with the payment to it of $80,000, and was completely estopped to deny said payment, or to claim any liability or indebtedness on the new obligations.

One distinct purpose of said compromise and decree was to relieve and discharge G. B. Lamar from his indebtedness to said bank to the amount of $80,000, and to substitute as debtor, to said amount, Caroline A. Lamar, Administratrix. The change effected a complete novation.

See Code of Georgia, §2153.
Dever vs. Aikin, 40 Ga., 423.
Gresham vs. Morrow, 40 Ga., 487.
Hamilton vs. Willingham, 45 Ga., 500.
Central R. R. vs. State, 54 Ga., 408.

We respectfully submit, therefore, that the decree rendered by the Judge in the Circuit Court, dismissing said bill as to the Defendants named, was error, and that his judgment should be reversed.

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Solicitors for Appellants.